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EPA--REGION 10

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

BALLARD OIL COMPANY,
Seattle, Washington,

Respondent.

Proceeding under Section 311(b) of the
Clean Water Act.

DOCKET NO. CWA-10-2014-0157

**CONSENT AGREEMENT AND FINAL
ORDER**

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (CAFO) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 311(b)(6)(B)(i) of the Clean Water Act (CWA), as amended by the Oil Pollution Act of 1990. CWA § 311(b)(6)(B)(i), 33 U.S.C. § 1321(b)(6)(B)(i); 33 U.S.C. § 2701 *et seq.*

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

1.3. 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 Ballard Oil Company (Respondent) agrees to issuance of the Final Order contained in Part V of this CAFO.

1.4. EPA is authorized to assess a civil penalty against any owner, operator, or person in charge of an onshore facility who fails or refuses to comply with any regulation issued under

Section 311(j) of the CWA, not to exceed \$ 37,500. CWA § 311(b)(6)(B)(i)-(j); 33 U.S.C. § 1321(b)(6)(B)(i)-(j); 40 C.F.R. Part 19.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

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

2.3. Part III of this CAFO 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 implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. The Oil Pollution Prevention regulations in 40 C.F.R. Part 112 implement Section 311(j) of the CWA, and establish requirements for preventing the discharge of oil. These requirements apply to owners and operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products that, due to facility location, could reasonably be expected to discharge oil in harmful quantities to navigable waters of the United States or adjoining shorelines. CWA § 311(j), 33 U.S.C. § 1321(j); 40 C.F.R. Part 112.

3.2. Quantities of oil which may be harmful to the public health or welfare or the environment of the United States include discharges of oil that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or cause a sludge or emulsion to

be deposited beneath the surface of the water or upon adjoining shorelines. CWA § 311(b)(4), 33 U.S.C. § 1321(b)(4); 40 C.F.R. § 110.3; Exec. Order No. 11735, 38 Fed. Reg. 21243 (Aug. 7, 1973).

3.3. The owner or operator of an onshore facility, located where the facility could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, is required to prepare and implement a Spill Prevention, Control and Countermeasure (SPCC) Plan in accordance with 40 C.F.R. § 112.7. 40 C.F.R. §§ 112.1, 112.3, 112.7.

3.3.1. The SPCC Plan shall be prepared “in accordance with good engineering practices” and have the full approval of management with authority to commit the necessary resources to implement the plan. 40 C.F.R. § 112.7.

3.4. Respondent is a “corporation” organized under the laws of the State of Washington, and a “person” for purposes of the CWA. CWA § 311(a)(7), 33 U.S.C. § 1321(a)(7); 40 C.F.R. § 112.2.

3.5. Respondent is the “owner or operator” of an “onshore facility” (Facility) located on Salmon Bay at 5300 26th Ave NW in Seattle, Washington which stores and distributes “oil.” CWA § 311(a)(1), (6), (10); 33 U.S.C. § 1321(a)(1), (6), (10); 40 C.F.R. § 112.2.

3.6. Respondent gathers, stores, processes, refines, transfers, distributes, uses, or consumes oil or oil products at the Facility. 40 C.F.R. § 112.1(b).

3.6.1. The Facility has four vertical, aboveground, bulk storage containers; each contain up to 16,000 gallons of diesel fuel and/or fuel oil.

3.6.2. The Facility has 30 jumbo tanks that are used to contain used oil.

Respondent’s SPCC Plan estimates the jumbo tanks have a combined capacity of 13,500 gallons.

3.6.3. The Facility typically has between 500 and to 650 55-gallon drums that are used to contain oils, in the form of grease and other lubricants. The 55-gallon drums are “bulk storage containers.”

3.6.4. The Facility has or had two horizontal, aboveground bulk storage tanks which were previously used to contain oil. On August 14, 2012, the horizontal bulk storage tanks were not permanently closed in accordance with 40 C.F.R. § 112.2.

3.7. The Facility transfers oil over water to vessels, and has an aggregate aboveground storage capacity of oil in excess of 42,000 gallons. 40 C.F.R. §§ 112.1, 112.20(f)(1)(i).

3.8. The Facility is “non-transportation-related,” as defined in the Memorandum of Understanding between the Secretary of Transportation and EPA Administrator, dated November 24, 1971. 40 C.F.R. Part 112, App. A; 40 C.F.R. § 112.2.

3.9. The Facility is located on Salmon Bay, in Seattle, Washington.

3.9.1. Salmon Bay is among the navigable waters of the United States. 33 U.S.C. § 1362(7); 40 C.F.R. § 112.2.

3.9.2. Salmon Bay is critical habitat for species determined to be threatened under the Endangered Species Act, such as the Puget Sound Evolutionarily Significant Unit (ESU) of Chinook Salmon and Coastal–Puget Sound ESU of Bull Trout. 16 U.S.C. § 1533, 65 Fed. Reg. 42422, 75 Fed. Reg. 63898.

3.9.3. The Facility is subject to the SPCC regulations at 40 C.F.R. Part 112 as, due to its location, the Facility could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines.

3.10. Respondent was and is required to prepare and implement a Spill Prevention, Control and Countermeasure (SPCC) Plan in accordance with 40 C.F.R. § 112.7. 40 C.F.R. §§ 112.1, 112.3, 112.7.

3.11. On August 14, 2012, EPA conducted an SPCC and FRP inspection (Inspection) at the Facility.

3.12. All allegations within Part III of this CAFO, with respect to the contents of Respondent's SPCC Plan, reference the SPCC Plan that Respondent provided to EPA after the inspection was complete.

Counts 1-2

3.13. Respondent is required to keep a complete copy of the Facility's SPCC Plan at the Facility if it is attended at least four hours a day, and Respondent is required to have the Facility's SPCC Plan available for review by EPA during normal working hours. 40 C.F.R. § 112.3(e)(1)-(2).

3.13.1. Respondent's Facility is attended at least four hours a day.

3.13.2. At the time of the Inspection, at or around 9 am, the EPA inspector requested to review the Facility's SPCC Plan; a copy of the Facility's SPCC Plan was not available onsite and not available for review.

3.14. **Count 1:** Respondent violated 40 C.F.R. § 112.3(e)(1), when Respondent did not maintain a complete copy of the Facility's SPCC Plan at the Facility.

3.15. **Count 2:** Respondent violated 40 C.F.R. § 112.3(e)(2), when Respondent did not have a copy of the Facility's SPCC Plan available for review by EPA.

Counts 3-4

3.16. Respondent has a Storage Bay at the Facility that is adjacent to and immediately to the south of Respondent's Midwest Warehouse, which is open to the elements on the west side. Respondent's Storage Bay is located less than 70 feet from Salmon Bay.

3.17. At the time of the Inspection, Respondent stored 55-gallon drums of grease, motor oil, and other lubricant products inside the Storage Bay. Grease, motor oil, and other lubricant

products are types of “oil.” The 55-gallon drums are “bulk storage containers,” and the use of these containers of oil is regulated under the Oil Pollution Prevention regulations. CWA § 311(j), 33 U.S.C. § 1321(j); 40 C.F.R. §§ 112.1(d)(5), 112.2; 40 C.F.R. Part 112.

3.17.1. Respondent was and is required to prevent the discharge of oil from mobile or portable oil storage containers by positioning or locating those containers within a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation. 40 C.F.R. §§ 112.7(c); 112.8(c)(2), (11).

3.17.2. At the time of the Inspection, the mobile or portable oil storage containers of oil within Respondent’s Storage Bay were not surrounded by a berm, dike, or any other form of secondary containment.

3.18. Respondent was and is required to design the Facility drainage from all undiked areas with the potential to drain into Salmon Bay or other navigable waters of the United States or adjoining shorelines to flow into holding ponds or catchment basins designed to retain oil or return it to the Facility. 40 C.F.R. § 112.8(b)(3).

3.18.1. The drainage pathway from the west side of Respondent’s Storage Bay leads to a surface drain, approximately 35 feet west of the Storage Bay, located above Salmon Bay. The surface drain discharges to a catch basin which in turn discharges directly to Salmon Bay. The storage capacity of the catch basin is less than 55 gallons.

3.18.2. The drainage pathway from the east side of Respondent’s Storage Bay leads to a surface drain, located less than 15 feet east-southeast of the Storage Bay, which discharges to a catch basin which in turn discharges directly to Salmon Bay. The storage capacity of the catch basin is less than 55 gallons.

3.19. **Count 3:** Respondent violated 40 C.F.R. §§ 112.7(c), 112.8(c)(2) and (11) when Respondent failed to construct secondary containment around the storage containers of oil in Respondent's Storage Bay.

3.20. **Count 4:** Respondent violated 40 C.F.R. § 112.8(b)(3) in its use of a facility drainage system with insufficient capacity to properly retain oil or return it to the Facility.

Count 5

3.21. Respondent was and is required to properly design pipe supports to minimize abrasion and corrosion and allow for expansion and contraction. 40 C.F.R. § 112.8(d)(3).

3.21.1. At the time of the Inspection, Respondent had pipes that were not isolated from piping supports of dissimilar material, and were not otherwise provided sufficient cathodic protection to prevent corrosion.

3.21.2. At the time of the Inspection, Respondent's pipes, valves, and other appurtenances displayed visible signs of corrosion.

3.22. **Count 5:** Respondent violated 40 C.F.R. § 112.8(d)(3) in failing to design pipe supports to minimize corrosion.

Counts 6-8

3.23. Respondent is required to conduct and document the training of oil-handling personnel in the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and, the contents of the Facility SPCC Plan. 40 C.F.R. §§ 112.7(f)(1).

3.23.1. Respondent's SPCC Plan had no record of training sessions for oil-handling personnel, nor did Respondent provide evidence of training sessions for oil-handling personnel.

3.24. Respondent is required to schedule, conduct and document discharge prevention briefings for the Facility's oil-handling personnel at least once a year to assure adequate understanding of the SPCC Plan at the Facility. The briefings must highlight and describe known discharges or failures, malfunctioning components, and any recently developed precautionary measures. 40 C.F.R. §§ 112.1(b), 112.7(f)(3), 40 C.F.R. Part 112 App. F § 1.8.3.

3.24.1. Respondent's SPCC Plan had no record of discharge prevention briefings for oil-handling personnel, nor did Respondent provide evidence of annual discharge prevention briefings for oil-handling personnel.

3.25. Respondent is required to designate and document a person at the Facility who is accountable for discharge prevention and who reports to Facility management. 40 C.F.R. § 112.7(f)(2).

3.25.1. Respondent's SPCC Plan did not document the person at the Facility accountable for discharge prevention, who reports to management.

3.26. **Count 6:** Respondent violated 40 C.F.R. § 112.7(f)(1) in failing to document and/or conduct discharge prevention training for the Facility's oil-handling personnel.

3.27. **Count 7:** Respondent violated 40 C.F.R. § 112.7(f)(3) and 40 C.F.R. Part 112 App. F § 1.8.3 in failing to document and/or conduct discharge prevention briefings for the Facility's oil-handling personnel at least once a year.

3.28. **Count 8:** Respondent violated 40 C.F.R. § 112.7(f)(2) in failing to document and/or designate the person at the Facility accountable for discharge prevention and who reports to Facility management.

Counts 9-10

3.29. Respondent is required to inspect the outside of containers for signs of deterioration, discharges, or the accumulation of oil inside diked areas used as secondary

containment. Respondent is required to remove any accumulations of oil in diked areas. 40 C.F.R. § 112.8(c)(6), (c)(10).

3.30. Respondent is required to use valves to restrain drainage from diked areas used as secondary containment into a storm drain, open watercourse, or lake, and to ensure the diked areas are sufficiently impervious to contain oil discharged into that diked area. 40 C.F.R. § 112.8(b)(1), (c)(2).

3.30.1. At the time of the Inspection, a crack with an adjacent discolored area was present in the inside wall of the dike that provided secondary containment for the four 16,000 gallon vertical storage tanks.

3.31. Respondent may only empty uncontaminated rainwater from the diked area if Respondent inspects the retained rainwater to ensure that its presence will not cause a discharge of oil, supervises the removal of uncontaminated rainwater from the diked area, and keeps adequate records when removing fluid from the diked area. 40 C.F.R. § 112.8(b)(1)-(2); 40 C.F.R. § 112.8 (c)(3).

3.31.1. Prior to the Inspection, Respondent did not supervise the removal of uncontaminated rainwater from diked areas for the duration of its removal, to ensure that it would not cause a discharge of oil.

3.31.2. Prior to the Inspection, Respondent did not record any inspections or supervision of the times when Respondent removed rainwater and other accumulated fluids from the diked areas used as secondary containment.

3.31.3. At the time of the Inspection, fluid with an oily sheen was present inside the dike that provided secondary containment for the four 16,000 gallon vertical storage tanks.

3.32. **Count 9:** Respondent violated 40 C.F.R. § 112.8(b)(2) and (c)(3), when Respondent did not supervise, record, or maintain records of the removal of uncontaminated rainwater from diked areas for the duration of its removal.

3.33. **Count 10:** Respondent violated 40 C.F.R. § 112.8(c)(10) when Respondent did remove oil in diked areas.

Count 11

3.34. Respondent is required to conduct the inspections and tests listed within Respondent's SPCC Plan, and to keep a record of those inspections and tests, signed by the appropriate supervisor or inspector, with the SPCC Plan for a period of three years. 40 C.F.R. § 112.7(e).

3.34.1. Respondent's SPCC Plan requires inspectors to sign and date Attachment #3 of the SPCC each time either water is drained from or oil is removed from the secondary containment area for Respondent's 16,000 gallon vertical storage tanks.

3.34.2. Respondent's SPCC Plan required inspectors to sign, date and provide details on Attachment #4 each time they conduct external and/or internal visual inspections of non-buried tanks.

3.34.3. Respondent's SPCC Plan required inspectors to inspect the oil/water separator at least monthly for accumulated oil, remove the oil if more than 300-gallons of oil is present, and then sign, date, and record the amount of oil removed from the oil water separator on Attachment #5.

3.34.4. No inspections were maintained or otherwise documented within Respondent's SPCC Plan.

3.35. **Count 11:** Respondent violated 40 C.F.R. § 112.7(e) by not keeping a record of the inspections and tests, signed by the appropriate supervisor or inspector, with the SPCC Plan

for a period of three years. Alternatively, Respondent violated 40 C.F.R. §§ 112.7(e), 112.8(b) and (c) if the inspections required under Respondent's SPCC Plan were not conducted.

Counts 12-13

3.36. Respondent's SPCC plan did not include written procedures detailing how to conduct the inspections required within the SPCC and by the SPCC regulations.

3.36.1. Respondent's SPCC Plan stated that the oil/water separator shall be inspected at least monthly for accumulated oil, and that accumulated oil in the spill containment tank shall be removed if there is more than 300 gallons, but contained no instructions as to how to properly inspect the tank, or how to determine the amount of oil present in that container.

3.36.2. Respondent is required to regularly test liquid level sensing devices to ensure proper operation. 40 C.F.R. § 112.8(c)(8)(v).

3.36.3. Respondent's SPCC Plan did not indicate where the liquid level sensing devices to be test are located, how frequently they should be tested, or how to test the device.

3.36.4. Respondent was and is required to test each aboveground container for integrity on a regular schedule, which must combine visual inspection with a non-destructive shell test (e.g., hydrostatic, radiographic, ultrasonic, acoustic emissions). Respondent was and is required to keep comparison records, to inspect the container's supports and foundations, and to inspect the outside of containers for signs of deterioration, discharges, or accumulation of oil inside diked areas. 40 C.F.R. § 112.8(c)(6).

3.36.5. Respondent's SPCC Plan did not identify how frequently to conduct any of the tests, what criteria will be used, where comparison records will be kept, or which non-destructive shell test(s) will be used.

3.37. **Count 12:** Respondent violated 40 C.F.R. § 112.7(e), as Respondent's SPCC Plan included no or inadequate written inspection procedures with the SPCC Plan.

3.38. **Count 13:** Respondent violated 40 C.F.R. § 112.8(c)(6), by not conducting non-destructive shell tests on each aboveground container for integrity on a regular schedule.

Count 14

3.39. Despite having a large number of 55-gallon drums, Respondent's SPCC Plan did not discuss routine handling of those containers, loading, unloading or other transfers.

3.39.1. In preparing the SPCC Plan, Respondent is required to describe discharge prevention measures, including procedures for routine handling of products, including loading, unloading, and facility transfers. 40 C.F.R. § 112.7(a)(3)(ii).

3.40. **Count 14:** Respondent violated 40 C.F.R. § 112.7(a)(3)(ii), in preparing a SPCC Plan which inadequately describes discharge prevention measures, including procedures for routine handling of products, including loading, unloading, and facility transfers.

Count 15

3.41. Although the Facility typically has between 500 and to 650 55-gallon drums, Respondent's SPCC Plan did not describe the areas where 55-gallon drums are stored, drainage controls around storage areas for the 55-gallon drums, or other structures, equipment, and procedures for controlling discharges from those containers.

3.41.1. In preparing the SPCC Plan, Respondent was and is required to describe the discharge or drainage controls around containers and other structures, equipment, and procedures for the control of a discharge. 40 C.F.R. § 112.7(a)(3)(iii).

3.42. **Count 15:** Respondent violated 40 C.F.R. § 112.7(a)(3)(iii), in preparing a SPCC Plan which inadequately describes the discharge or drainage controls around containers and other structures, equipment, and procedures for the control of a discharge.

Count 16

3.43. The Facility diagram in Respondent's SPCC Plan did not show where any piping is located. The Facility diagram in Respondent's SPCC Plan did not show where any of the 55-gallon drums of oil are stored. 40 C.F.R. §§ 112.1(d)(5), 112.7(a)(3).

3.43.1. In preparing the SPCC Plan, Respondent was and is required to describe the layout of the Facility and include a Facility diagram. The Facility diagram is required to include all transfer stations and connecting pipe, and mark the location and contents of each container. 40 C.F.R. § 112.7(a)(3).

3.44. **Count 16:** Respondent violated 40 C.F.R. § 112.7(a)(3), as it included an inadequate Facility diagram within the Facility's SPCC Plan.

Count 17

3.45. Respondent's SPCC Plan did not adequately describe security procedures, specific to Respondent's Facility, such as the location of master flow and drain valves, how to secure the master flow and drain valves, how site lighting was evaluated to be appropriate to prevent acts of vandalism and assist in the discovery of oil discharges. 40 C.F.R. § 112.7(g).

3.46. **Count 17:** Respondent violated 40 C.F.R. § 112.7(g), as it included inadequate security procedures within the Facility's SPCC Plan.

Count 18-19

3.47. Respondent's SPCC Plan had a specified location within the plan for the Professional Engineer's Certification to be located, but a Professional Engineer's Certification was not included in the SPCC Plan.

3.47.1 Respondent was and is required to have a licensed Professional Engineer attest that he is familiar with the requirements of 40 C.F.R. Part 112. 40 C.F.R. § 112.3(d)(1)(i).

3.47.2. Respondent was and is required to have a licensed Professional Engineer attest that the engineer or his agent has visited and examined the Facility. 40 C.F.R. § 112.3(d)(1)(ii).

3.47.3. Respondent was and is required to have a licensed Professional Engineer attest that Respondent's SPCC Plan considered applicable industry standards, and with the requirements of 40 C.F.R. Part 112. 40 C.F.R. § 112.3(d)(1)(iii).

3.47.4. Respondent was and is required to have a licensed Professional Engineer attest that the procedures for required inspections and testing have been established. 40 C.F.R. § 112.3(d)(1)(iv).

3.47.5. Respondent was and is required to have a licensed Professional Engineer attest that the SPCC Plan is adequate for the Facility. 40 C.F.R. § 112.3(d)(1)(v).

3.48. **Count 18:** Respondent violated 40 C.F.R. §§ 112.3(d)(1)(i)-(v), as Respondent did not have a licensed Professional Engineer certify the SPCC Plan and attest that the engineer or his agent had visited the Facility, that the engineer was familiar with the requirements of 40 C.F.R. Part 112, that Respondent's SPCC Plan considered applicable industry standards and the requirements of 40 C.F.R. Part 112, the Respondent had established procedures for required inspections and testing, and that the SPCC Plan was adequate for the Facility.

3.49. **Count 19:** Respondent violated 112.5(c), as Respondent did not have a Professional Engineer certify the SPCC Plan and any technical amendments to that plan.

Count 20

3.50. In preparing the SPCC Plan, the owner or operator of the Facility is required to either follow the sequence specified in the SPCC regulations or else prepare an equivalent plan which includes a section that cross references the sequence in that equivalent SPCC Plan against the sequence in the SPCC regulations. 40 C.F.R. § 112.7.

3.50.1. Respondent's SPCC Plan included a Table of Contents which matched the sequence specified in the SPCC regulations, but the Table of Contents do not match the internal arrangement of information.

3.50.2. Respondent's SPCC Plan included a Table of Contents which matches the sequence specified in the SPCC regulations, but the Table of Contents do not match the internal arrangement of information.

3.51. **Count 20:** Respondent violated 40 C.F.R. § 112.7, as Respondent neither followed the sequence specified in the SPCC regulations nor prepared an equivalent plan which cross referenced the sequence in Respondent's SPCC Plan against the sequence in the SPCC regulations.

Count 21

3.52. Respondent's SPCC plan included a certification section for a manager's signature, for the purpose of certifying that a manager of the Facility examined and approved the SPCC plan. That certification remains unsigned, and no manager had signed or dated any portion of the SPCC.

3.52.1. A manager of the Facility is required to approve the written SPCC Plan, at a level of authority sufficient to commit the necessary resources to fully implement the requirements of the plan. 40 C.F.R. § 112.7.

3.52.2. Respondent has been organized as a corporation under the laws of the State of Washington since at least 1960, and was first required to prepare a SPCC, and fully implement that SPCC on or before February 18, 2005. 40 C.F.R. § 112.3(a).

3.53. **Count 21:** Respondent violated 40 C.F.R. § 112.7, as a manager of the Facility did not officially approve the written SPCC Plan, at a level of authority sufficient to commit the necessary resources to fully implement the requirements of the plan.

Count 22

3.54. Respondent's SPCC plan included a form for Respondent to sign and date after each five year review, which is unsigned.

3.54.1. Respondent was and is required to review and evaluate the SPCC Plan at least once every five years. At the beginning or end of the SPCC Plan or as an appendix to the SPCC Plan, the owner or operator of the Facility is required to document that it completed its review and evaluation of the SPCC Plan, and sign a statement as to whether or not the plan will be amended as a result of that review. 40 C.F.R. § 112.5(b).

3.54.2. Respondent has been organized as a corporation under the laws of the State of Washington since at least 1960, and was first required to prepare a SPCC, and fully implement that SPCC on or before February 18, 2005. 40 C.F.R. § 112.3(a).

3.55. **Count 22:** Respondent violated 40 C.F.R. § 112.5(b) and (c), as Respondent did not review and evaluate the Facility's SPCC Plan, as is required at least once every five years, and did not sign a statement as to whether Respondent would amend the plan as a result of that review.

Count 23

3.56. Respondent was required to submit a Facility Response Plan to EPA Region 10. 40 C.F.R. § 112.20(a).

3.56.1. Respondent's non-transportation related onshore facility transfers oil over water to or from vessels and has a total oil storage capacity greater than or equal to 42,000 gallons, and therefore could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines. 40 C.F.R. § 112.20(a), (f)(1)(i).

3.56.2. Respondent has not submitted a Facility Response Plan to EPA.

3.57. **Count 23:** Respondent violated 40 C.F.R. § 112.20, which required Respondent to prepare and submit a facility response plan to EPA.

3.58. EPA is authorized to assess a civil penalty against any owner, operator, or person in charge of an onshore facility who fails or refuses to comply with any regulation issued under Section 311(j) of the CWA, not to exceed \$37,500. CWA § 311(b)(6)(B)(i)-(j), 33 U.S.C. § 1321(b)(6)(B)(i)-(j); 40 C.F.R. Part 19.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in this CAFO.

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

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

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

4.5. *Penalty:* Pursuant to Section 311(b) of the CWA, 33 U.S.C. § 1321(b), and in n consideration of statutory penalty factors identified in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), EPA has determined and Respondent agrees that an appropriate penalty to settle

this action is \$34,100.

4.6. Respondent consents to the issuance of the attached Final Order and to payment of the civil penalty set forth in Paragraph 4.5 within 30 days of the effective date of the Final Order. 40 C.F.R. § 22.31(c).

4.7. Payment under this CAFO must be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered via United States mail to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Respondent shall note on the check the title and docket number of this action, as they appear in the caption of this CAFO. Respondent may also make the penalty payment by wire transfer, ACH, or online payment in accordance with instructions, which can be provided by EPA upon request.

4.8. Respondent must deliver via United States mail photocopies of the check described in Paragraph 4.7, above, on the Regional Hearing Clerk and EPA Compliance Officer at the following addresses:

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

Derek Schruhl, Compliance Officer
U.S. Environmental Protection Agency
Region 10, MS OCE-133
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.9. Except as described in Subparagraph 4.10.2, below, each party shall bear its own fees and costs in bringing or defending this action.

4.10. If Respondent fails to pay any portion of the penalty assessed by this CAFO 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.

4.10.1 *Interest.* Interest shall accrue from the effective date of the Final Order, at the rate established by the Secretary of the Treasury, and applied to any portion of the assessed penalty which remains unpaid 30 days after the effective date of the Final Order. CWA § 311(b)(6)(H), 33 U.S.C. § 1321(b)(6)(H); 31 U.S.C. § 3717(a)(1); 40 C.F.R. § 13.11(a)(3).

4.10.2 *Attorneys Fees, Collection Costs, Nonpayment Penalty.* Pursuant to 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 4.5, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.11. *Federal Tax.* Penalties paid pursuant to this Final Order are administrative civil penalties assessed by EPA and shall not be deductible for federal tax purposes. 26 U.S.C. § 162(f).

4.12. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to the terms and conditions of this document.

4.13. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.14. Compliance with all the terms and conditions of this CAFO shall result in full settlement and satisfaction of all penalty claims for violations alleged in Part III of this CAFO.

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

DATED:

8.29.14

FOR RESPONDENT:

Debra Millard

DEBRA MILLARD, President
Ballard Oil Company

DATED:

9-3-14

FOR COMPLAINANT:

Edward J. Kowalski

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement in the Consent Agreement.

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

5.3. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which Respondent may have with respect to any issue of fact or law set forth in this CAFO, including, but not limited to, any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

5.4. This Final Order shall become effective upon filing.

SO ORDERED this 8th day of September, 2014.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Ballard Oil Company, Docket Number: CWA-10-2014-0157**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

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

Christopher Bellovary
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, Washington 98101

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

Ballard Oil Company
Attn: Debra Millard
5300 26th Avenue NW
Seattle, Washington 98107

DATED this 8th day of Sept., 2014


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10