



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAY 31 2019

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Scott Newell
Director EH&S
Hero BX
12982 Cherokee Bend Drive
Moundville, Alabama 36201

Re: SPCC Expedited Settlement Agreement
Hero BX Alabama
SPCC Inspection Number: AL1703-004
Docket No. CWA-04-2019-7002(b)

Dear Mr. Newell:

This letter is to notify Hero BX that the Expedited Settlement Agreement (ESA) for the above-referenced matter has been signed by the U.S. Environmental Protection Agency and became effective on the date of filing with the Regional Hearing Clerk, as required by 40 C.F.R. §§ 22.6 and 22.31, as indicated on the Certificate of Service. The ESA is binding on the EPA and Hero BX. A copy of the ESA is enclosed.

Pursuant to the ESA, Hero BX, shall submit the payment of \$1,525 within thirty (30) days of receipt of this letter. Payment shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express) payable to the "Oil Spill Liability Trust Fund." If paying by check, Respondent shall submit a cashier's check or certified check. The check shall bear the notation "OSLTF - 311" and Respondent shall reference the title and docket number of this case on the face of the check. The payment shall be made in one of the forms stated in Enclosure A. For additional payment information, see the EPA's payments webpage <http://www2.epa.gov/financial/makepayment>.

Pursuant to 40 C.F.R. § 22.31(c), you shall send a separate copy of the check or the other instrument of payment that you use and a written statement that the payment is being made in accordance with this ESA, to the persons at the following addresses:

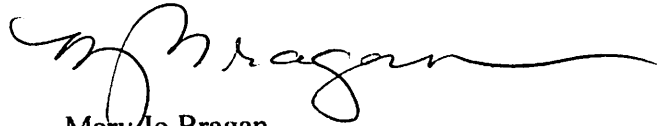
Ms. Patricia Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960

And to:

John C. Goodwin
Environmental Engineer
Enforcement and Compliance Branch
Resource Conservation and Restoration Division
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960

If you have any questions, please contact John C. Goodwin at (404) 562-8488.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Jo Bragan", with a long horizontal flourish extending to the right.

Mary Jo Bragan
Chief, Water Enforcement Branch
Enforcement and Compliance Assurance
Division

Enclosures



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
61 FORSYTH ST., S.W. ATLANTA, GEORGIA 30303-8960
SPCC EXPEDITED SETTLEMENT AGREEMENT**

DOCKET NO.: CWA-04-2019-7002(b)

On June 1, 2017, an authorized representative of the United States Environmental Protection Agency (EPA) conducted an inspection of the facility located at 12982 Cherokee Bend Drive, Moundville, Alabama (the Facility) owned and/or operated by Hero BX (Respondent) to determine compliance with the Spill Prevention, Control, and Countermeasure (SPCC) regulations promulgated at 40 C.F.R. Part 112 under the Clean Water Act (CWA) § 311(j), 33 U.S.C. § 1321(j). Based on that inspection, the EPA finds that Respondent had failed to comply with the SPCC regulations as described on the attached "Spill Prevention, Control, and Countermeasure Inspection, Findings, Alleged Violations and Proposed Penalty Form" (Form), which is incorporated by reference.

The EPA finds Respondent's conduct is subject to the SPCC regulations and Respondent has violated the SPCC regulations as described in the Form. Respondent admits being subject to 40 C.F.R. Part 112 and that the EPA has jurisdiction over Respondent and Respondent's conduct as described in the Form. Respondent does not contest the inspection findings, and neither admits nor denies the allegations in the Form.

The EPA is authorized to enter into this Expedited Settlement Agreement (ESA) under the authority vested in the Administrator of the EPA by CWA § 311(b)(6)(B)(i), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990, and by 40 C.F.R. § 22.13(b) and § 22.18(b)(2)-(3). The parties enter into this ESA to settle the civil violations described in the Form for a penalty of \$1,525. Respondent consents to the assessment of this penalty.

This ESA is also subject to the following terms and conditions: Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the violations have been corrected and Respondent is in compliance with 40 C.F.R. Part 112. Respondent agrees to pay the penalty assessed within thirty (30) calendar days of receiving written notice that the ESA has been executed and is effective.

Do not enclose payment. The EPA will provide instructions in writing on the procedures for making the penalty payment to the "Oil Spill Liability Trust Fund" with a copy of the Final Order.

After the parties sign this ESA and Respondent pays the civil penalty, the EPA will take no further action against Respondent for the violations of the SPCC regulations described in the Form. However, the EPA does not waive any rights to take enforcement action for any other violations by Respondent of the SPCC regulations or of any other federal statute or regulation.

Upon signing and returning this ESA to the EPA, Respondent waives any right to judicial review under CWA § 311(b)(6)(G), 33 U.S.C. § 1321(b)(6)(G), any right to appeal or request a hearing to contest any fact or allegation, and consents to the EPA's approval of the ESA without further notice. Failure by Respondent to pay the penalty assessed by this ESA in full by its due date may subject Respondent to a civil action to collect the assessed penalty plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to CWA § 311(b)(6)(H), 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

This ESA is binding on the parties signing below. Each person signing this ESA certifies that he or she has the authority to sign for the party who he or she represents and to bind that party to its terms. The ESA is effective upon the EPA's filing of the ESA with the Regional Hearing Clerk. If Respondent does not sign and return this ESA as presented within thirty (30) calendar days of the date of its receipt, the proposed ESA will be withdrawn without prejudice to the EPA's ability to file any other enforcement action for the noncompliance identified in the Form, unless an extension is granted by EPA.

APPROVED BY RESPONDENT:

Name (print): SCOTT NEWELL
 Title (print): DIRECTOR ENA S
Scott Newell Date 4/17/19
 Signature

APPROVED BY EPA:

Mary Jo Bragan Date 5/20/19
 Mary Jo Bragan, Chief
 Water Enforcement Branch
 Enforcement and Compliance Assurance Division

FINAL ORDER

IT IS SO ORDERED:
Tanya Floyd Date: 5/30/19
 Tanya Floyd
 Regional Judicial Officer

ENCLOSURE A

COLLECTION INFORMATION

Address for payment by certified or cashier's check sent by U.S. Postal Service:

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

Address for payment by certified or cashier's check sent by non-U.S. Postal Service Express mail:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
(314) 481-1028

Electronic Funds Transfer payment:

Wire transfers to the EPA can be done through the Federal Reserve Bank of New York using the following information:

ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

Automated Clearinghouse Payments (also known as REX or remittance-express):

Automated Clearinghouse payments to EPA can be made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury Facility:
5700 Rivertech Court
Riverdale, MD 20737
US Treasury Contact Information:
1-866-234-5681

**Spill Prevention, Control, and Countermeasure Inspection
Findings, Alleged Violations, and Proposed Penalty Form**

(Note: Do not use this form if there is no secondary containment)

These Findings, Alleged Violations and Penalties are issued by EPA under the authority vested in the Administrator of the EPA by Section 311(b)(6)(B)(I) of the Clean Water Act, as amended by the Oil Pollution Act of 1990.

Company Name
Hero BX

Docket Number
CWA-04-2019-7002(b)

Facility Name
Hero BX Alabama

Date
June 1, 2017

Address
12982 Cherokee Bend Drive

Facility ID Number
AL1703-004

City
Moundville

Inspector's Name
Terry Tanner

State AL **Zip Code** 36201

EPA Approving Official
Mary Jo Bragan

Contact
Scott Newell

Enforcement Contact
John C. Goodwin



**Summary of Findings
(Bulk Storage Facilities)**

GENERAL TOPICS: 112.3(a), (d), (e); 112.5(a), (b), (c); 112.7 (a), (b), (c), (d)

(When the SPCC Plan review penalty exceeds \$1,750 enter only the maximum allowable of \$1,750)

- Failure to have or implement a Spill Prevention, Control, and Countermeasure Plan 112.3 (\$1,750)
- Plan not certified by a professional engineer 112.3(d) (\$500)
- Certification lacks one or more required elements 112.3(d)(1) (\$125)
- Plan not maintained on site (if manned at least four hrs/day) or not available for review 112.3(e)(1) (\$350)
- No evidence of five-year review of plan by owner/operator 112.5(b) (\$100)
- No plan amendment(s) if the facility has had a change in: design, construction, operation, or maintenance which affects the facility's discharge potential 112.5(a) (\$100)
- Amendment(s) not certified by a professional engineer 112.5(c) (\$175)
- No management approval of plan 112.7 (\$500)
- Plan does not follow sequence of the rule and/or cross-reference not provided 112.7 (\$175)
- Plan does not discuss additional procedures/methods/equipment not yet fully operational 112.7 (\$100)

- Plan does not discuss alternative environmental protection to SPCC requirements 112.7(a)(2) (\$225)
 - Plan has inadequate or no facility diagram 112.7(a)(3) (\$100)
 - Inadequate or no listing of type of oil and storage capacity layout of containers 112.7(a)(3)(i) (\$75) \$75
 - Inadequate or no discharge prevention measures 112.7(a)(3)(ii) (\$75)
 - Inadequate or no description of drainage controls 112.7(a)(3)(iii) (\$75)
 - Inadequate or no description of countermeasures for discharge discovery, response and cleanup 112.7(a)(3)(iv) (\$75)
 - Recovered materials not disposed of in accordance with legal requirements 112.7(a)(3)(v) (\$75)
 - No contact list & phone numbers for response & reporting discharges 112.7(a)(3)(vi) (\$75)
 - Plan has inadequate or no information and procedures for reporting a discharge 112.7(a)(4) (\$125)
 - Plan has inadequate or no description and procedures to use when a discharge may occur 112.7(a)(5) (\$175)
 - Inadequate or no prediction of flow from equipment failure which could result in discharges 112.7(b) (\$175) \$175
 - Plan does not discuss and facility does not implement appropriate containment/diversionary structures/equipment 112.7 (\$450) \$450
- If claiming impracticability of containment and appropriate diversionary structures:**
- Impracticability has not been clearly denoted and demonstrated in plan 112.7(d) (\$125)
 - No contingency plan 112.7(d)(1) (\$175)
 - No written commitment of manpower, equipment, and materials 112.7(d)(2) (\$175)
 - No periodic integrity and leak testing, if impracticability is claimed 112.7(d) (\$175)
 - Plan has no or inadequate discussion of general requirements not already specified 112.7(j) (\$100)

QUALIFIED FACILITY REQUIREMENTS: 112.6

- Qualified Facility: No Self certification 112.6(a) (\$500)
- Qualified Facility: Self certification lacks required elements 112.6(a) (\$125)
- Qualified Facility: Technical amendments not certified 112.6(b) (\$175)
- Qualified Facility: Un-allowed deviations from requirements 112.6(c) (\$125)
- Qualified Facility: Environmental Equivalence or Impracticability not certified by PE 112.6(d) (\$400)

WRITTEN PROCEDURES AND INSPECTION RECORDS 112.7(e)

- Plan does not include inspections and test procedures in accordance with 40 CFR Part 112 112.7(e) (\$100)
- Inspections and tests required are not in accordance with written procedures developed for the facility 112.7(e) (\$100)

- No Inspection records were available for review 112.7(e) (\$225)
(Written procedures and/or a record of inspections and/or customary business records)
- Inspection records are not signed by appropriate supervisor or inspector 112.7(e) (\$100)
- Inspection records are not maintained for three years 112.7(e) (\$100)

PERSONNEL TRAINING AND DISCHARGE PREVENTION PROCEDURES 112.7(f)

- No training on the operation and maintenance of equipment to prevent discharges and/or facility operations 112.7(f)(1) (\$100)
- No training on discharge procedure protocols 112.7(f)(1) (\$100)
- No training on the applicable pollution control laws, rules and regulations, and/or SPCC plan 112.7(f)(1) (\$100)
- Training records not maintained for three years 112.7(f)(1) (\$100)
- No designated person accountable for spill prevention 112.7(f)(2) (\$100)
- Spill prevention briefings are not scheduled and conducted at least annually 112.7(f)(3) (\$100)
- Plan has inadequate or no discussion of personnel and spill prevention procedures 112.7(a)(1) (\$100)

SECURITY (excluding Production Facilities) 112.7(g)

- Facility not fully fenced and entrance gates are not locked and/or guarded when plant is unattended or not in production 112.7(g)(1) (\$175)
- Master flow and drain valves that permit direct outward flow to the surface are not secured in a closed when in a non-operating or standby status 112.7(g)(2) (\$350)
- Starter controls on pumps are not locked in the "off" position or located at a site accessible only to authorized personnel when pumps are not in a non-operating or standby status 112.7(g)(3) (\$100)
- Loading and unloading connection(s) of piping/pipelines are not capped or blank-flanged when not in service or standby status 112.7(g)(4) (\$100)
- Facility lighting not adequate to facilitate the discovery of spills during hours of darkness and to deter vandalism 112.7(g)(5) (\$175)
- Plan has inadequate or no discussion of facility security 112.7(a)(1) (\$100)

FACILITY TANK CAR AND TANK TRUCK LOADING/UNLOADING 112.7(c) and/or (h-j)

- Inadequate containment for Loading Area [not consistent with 112.7(c)] 112.7(c) (\$500)
- Inadequate secondary containment, and/or rack drainage does not flow to catchment basin treatment system, or quick drainage system 112.7(h)(1) (\$850)
- Containment system does not hold at least the maximum capacity of the largest single compartment of any tank car or tank truck 112.7(h)(1) (\$525)

- There are no interlocked warning lights, or physical barrier system, or warning signs, or vehicle brake (\$350) interlock system to prevent vehicular departure before complete disconnect from transfer lines- 112.7(h)(2)
- There is no inspection of lowermost drains and all outlets prior to filling and departure of any tank car or tank truck- 112.7(h)(3) (\$175)
- Plan has inadequate or no discussion of facility tank car and tank truck loading/unloading rack 112.7(a)(1) (\$100) \$100

QUALIFIED OIL OPERATIONAL EQUIPMENT 112.7(k)

- Failure to establish and document procedures for inspections or a monitoring program to detect equipment failure and/or a discharge 112.7(k)(2)(i) (\$175)
- Failure to provide an oil spill contingency plan 112.7(k)(2)(ii)(A) (\$175)
- No written commitment of manpower, equipment, and materials 112.7(k)(2)(ii)(B) (\$175)

FACILITY DRAINAGE 112.8(b) & (c)

- Secondary Containment circumvented due to containment bypass valves left open and/or pumps and ejectors not manually activated to prevent a discharge 112.8(b)(1)and(2), and 112.8(c)(3)(i) (\$700)
- Dike water is not inspected prior to discharge and/or valves not open & resealed under responsible supervision 112.8(c)(3)(ii)and(iii) (\$525)
- Adequate records (or NPDES permit records) of drainage from diked areas not maintained 112.8(c)(3)(iv) (\$100)
- Drainage from undiked areas do not flow into catchment basins ponds or lagoons, or no diversion system to retain or return a discharge to the facility 112.8(b)(3)and(4) (\$525)
- Two "lift" pumps are not provided for more that one treatment unit 112.8(b)(5) (\$75)
- Plan has inadequate or no discussion of facility drainage 112.7(a)(1) (\$100)

BULK STORAGE CONTAINERS 112.8(c)

- Plan has inadequate or no risk analysis and/or evaluation of field-constructed aboveground tanks for brittle fracture 112.7(i) (\$100)
- Failure to conduct evaluation of field-constructed aboveground tanks for brittle fracture 112.7(i) (\$350)
- Material and construction of tanks not compatible to the oil stored and the conditions of storage such as pressure and temperature 112.8(c)(1) (\$525)
- Secondary containment appears to be inadequate 112.8(c)(2) (\$850)
- Containment systems, including walls and floors, are not sufficiently impervious to contain oil 112.8(c)(2) (\$425)
- Excessive vegetation which affects the integrity (\$175)
- Walls of containment system slightly eroded or have low areas (\$350)
- Completely buried tanks are not protected from corrosion or are not subjected to regular pressure testing 112.8(c)(4) (\$175)

- Partially buried tanks do not have buried sections protected from corrosion 112.8(c)(5) (\$175)
- Aboveground tanks are not subject to visual inspections 112.8(c)(6) (\$525)
- Aboveground tanks are not subject to periodic integrity testing, such as hydrostatic, nondestructive methods, etc. 112.8(c)(6) (\$525)
- Records of inspections (or customary business records) do not include inspections of tank supports, foundation, deterioration, discharges and/or accumulations of oil inside diked areas 112.8(c)(6) (\$100)
- Steam return/exhaust of internal heating coils which discharge into an open water course are not monitored, passed through a settling tank, skimmer or other separation system 112.8(c)(7) (\$175)
- Tank battery installations are not in accordance with good engineering practice because none of the following are present 112.8(c)(8) (\$525)
- No testing of liquid level sensing devices to ensure proper operation 112.8(c)(8)(v) (\$100)
- Effluent treatment facilities which discharge directly to navigable waters are not observed frequently to detect oil spills 112.8(c)(9) (\$175)
- Causes of leaks resulting in accumulations of oil in diked areas are not promptly corrected 112.8(c)(10) (\$525) \$525
- Mobile or portable storage containers are not positioned to prevent discharged oil from reaching navigable water 112.8(c)(11) (\$175)
- Secondary containment inadequate for mobile or portable storage tanks 112.8(c)(11) (\$600)
- Plan has inadequate or no discussion of bulk storage tanks 112.7(a)(1) (\$100) \$100

FACILITY TRANSFER OPERATIONS, PUMPING, AND FACILITY PROCESS 112.8(d)

-
- Buried piping is not corrosion protected with protective wrapping, coating or cathodic protection protection 112.8(d)(1) (\$175)
 - Corrective action is not taken on exposed sections of buried piping when deterioration is found 112.8(d)(1) (\$525)
 - Not-in-service or standby piping is not capped or blank-flanged and marked as to origin 112.8(d)(2) (\$100)
 - Pipe supports are not properly designed to minimize abrasion and corrosion, and allow for expansion and contraction 112.8(d)(3) (\$100)
 - Aboveground valves, piping and appurtenances are not inspected regularly 112.8(d)(4) (\$350)
 - Periodic integrity and leak testing of buried piping is not conducted 112.8(d)(4) (\$175)
 - Vehicle traffic is not warned of aboveground piping or other oil transfer operations 112.8(d)(5) (\$175)
 - Plan has inadequate or no discussion of facility transfer operations, pumping, and facility process 112.7(a)(1) (\$100) \$100
 - Plan does not include a signed copy of the Certification of the Applicability of the Substantial Harm Criteria per 40 CFR Part 112.20(e) (\$175)

TOTAL	\$1,525
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CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Expedited Settlement Agreement and Final Order, in the matter of Hero BX Docket Number: CWA-04-2019-7002(b), and have served the parties listed below in the manner indicated:

Stephen P. Smith
Associate Regional Counsel
Office of RCRA/CERCLA Legal Support
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

(Via EPA's electronic mail)

Mary Mattox
Water Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

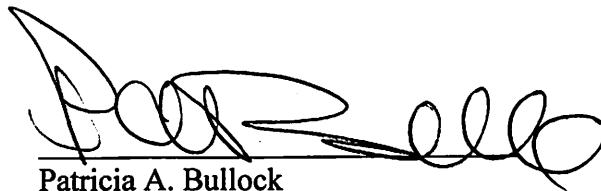
(Via EPA's electronic mail)

Scott Newell
Hero BX
12982 Cherokee Bend Drive
Moundville, Alabama 36201

(Via Certified Mail - Return Receipt
Requested)

Date:

5-31-19



Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9511