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7:27 AM

U.S. EPA REGION 8
HEARING CLERK

Tribbett, Kate

From: Reid, Jen <Jen.Reid@meritenergy.com>
Sent: Thursday, August 14, 2025 7:27 AM
To: R8 Hearing Clerk; Emeson, Robyn
Subject: RE: CWA CAFO for review and signature

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RJO Nann,

Thank you for your questions and the opportunity to clarify. An earlier draft of the Consent Agreement proposed to Merit by EPA Region 8 did contain more specific factual detail about each of EPA's alleged SPCC Plan deficiencies in Paragraphs 53-58. Merit originally requested striking these paragraphs entirely, leaving only the broader general allegation of October 2021 SPCC Plan deficiencies with Part 112 as alleged in Paragraph 52. (Merit requested this revision based on similar language that was included in a prior approved CAFO that resolved multiple alleged SPCC plan violations.) EPA counsel rejected Merit's request to eliminate these paragraphs outright, citing the Part 22 requirements to allege deficiencies with factual specificity for each violation alleged. The parties agreed to compromise in the next draft, which became the final signed Consent Agreement. Merit and EPA collectively took the position that these replacement factual allegations for Paragraphs 53-58, while much more generally alleged than in the original proposal, sufficiently alleged EPA's findings that Merit's particular October 2021 SPCC Plan did not meet the requirements of the five identified specific Part 112 subsections. While Merit and EPA recognize that this is a concise approach for providing a factual basis for each violation alleged about the contents of the October 2021 SPCC Plan, we believe it to comply with Part 22.

Merit's position is that it received appropriate notice of the alleged deficiencies through the information EPA shared in negotiations and—while Merit disputes that some of the allegations actually represent violations of 40 CFR Part 112—Merit did address each of the alleged deficiencies to EPA's satisfaction in a revised SPCC Plan before proposing this Consent Agreement for your consideration, as detailed in Paragraphs 59 and 60. Merit responds to your request for more factual details regarding Paragraphs 53-58 as follows:

53. The October 2021 SPCC Plan did not comply with the requirements in 40 C.F.R. § 112.7(a)(3). – This portion was not missing, but EPA found it was deficient due to discrepancies between the description of the Facility's layout and the Facility's diagram. Merit addressed EPA's finding by (1) adding a 400-gallon storage tank to a table of containers at the site (the tank was identified elsewhere in the plan but missing from the table) and (2) eliminating a reference to "transfer facilities" from a list of sources at the site that have secondary containment, because there are no transfer facilities at the site.

54. The October 2021 SPCC Plan did not comply with the requirements of 40 C.F.R. § 112.7(a)(4). – This portion was not missing entirely, but EPA found it was missing some of the information required to be identified. Merit addressed EPA's finding by updating the plan's internal spill notification template to add a blank for quantity of materials discharged to waters or adjoining shorelines. Prior to the inspection, the template included a blank for the quantity of materials released or spilled, but not a separate blank for the quantity of materials discharged to waters or adjoining shorelines.

55. The October 2021 SPCC Plan did not comply with the requirements of 40 C.F.R. § 112.7(e). – This portion was not missing entirely, but EPA found the developed procedures were not specific to the facility and did not include procedures for all required tests. The alleged violation relates to the inspection procedures included in

the plan. The inspection procedures identified secondary containment drain valves as a type of equipment subject to inspection requirements, but there are no secondary containment drain valves present at the site. Merit addressed EPA's finding by deleting the reference to secondary containment drain valves from the list of equipment subject to inspections.

56. The October 2021 SPCC Plan did not comply with the requirements of 40 C.F.R. § 112.9(b)(1). – EPA found the SPCC Plan did not adequately represent drainage requirements in the secondary containment area. The drainage requirements in the plan identified requirements for operation of secondary containment drain valves at the site. However, there are no secondary containment valves present at the site. Merit addressed EPA's finding by deleting the reference to secondary containment drain valves from the list of equipment subject to inspections.

57. The October 2021 SPCC Plan did not comply with the requirements of 40 C.F.R. § 112.9(c). – This portion of the plan was not missing, but EPA found conflicting information about containment capacity. One section of the plan (Section 3.2) identified the wrong overall facility containment capacity and did not match the capacity shown on Appendix B of the plan. Merit addressed EPA's finding by correcting the figure identified in Section 3.2 to ensure consistency between the containment capacity figures in Section 3.2 and Appendix B of the plan.

58. The October 2021 SPCC Plan did not comply with the requirements of 40 C.F.R. § 112.9(d)(iv). – The required written program was not missing entirely, but EPA found it was missing some of the elements of required flow line maintenance procedures. The plan included separate sections for the flow line maintenance procedures (Section 12.2) and cleanup and disposal of spill materials (Section 7.0). Merit addressed EPA's finding by including an explicit cross reference to the Section 7.0 cleanup and disposal procedures in Section 12.2.

Please let us know if you have further questions, or if revisions to the proposed Consent Agreement will be required after reviewing this response. Merit appreciates the opportunity to offer this response and will await the results of your additional consideration.

Thank you,

Jen Reid

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From: R8 Hearing Clerk <R8_Hearing_Clerk@epa.gov>

Sent: Tuesday, August 12, 2025 3:11 PM

To: Reid, Jen <Jen.Reid@meritenergy.com>; Emeson, Robyn <Emeson.Robyn@epa.gov>

Subject: FW: CWA CAFO for review and signature

EXTERNAL EMAIL

Please see the question below from the RJO.

Kate Tribbett

Regional Hearing Clerk
U.S. EPA Region 8



From: Nann, Barbara <nann.barbara@epa.gov>
Sent: Tuesday, August 12, 2025 8:33 AM
To: R8 Hearing Clerk <R8_Hearing_Clerk@epa.gov>
Subject: RE: CWA CAFO for review and signature

Hi Kate-

Upon review of the CWA Consent Agreement (specifically section IV paragraphs 53-58), I am having difficulty identifying the factual basis for each violation alleged related to the deficiency in the SPCC Plan as is required under 40 CFR 22.18(b)(2) (which also requires meeting the requirements detailed in 40 CFR 22.14(a)(3)). Can you follow up with Respondent on this issue? Specifically, how is the SPCC Plan deficient factually with regards to the 6 described SPCC implicated regulations? Are those entire sections missing in the SPCC Plan or are there parts of the plan that are missing? I suspect that the consent agreement will need to be revised to reflect the factual basis but I wanted to give Respondent the opportunity to clarify on this issue in case I am missing something.

Consent Agreement Legal Requirements

40 CFR 22.18(b)(2): **Consent agreement.** Any and all terms and conditions of a settlement shall be recorded in a written consent agreement signed by all parties or their representatives. The consent agreement shall state that, for the purpose of the proceeding, respondent: Admits the jurisdictional allegations of the complaint; admits the facts stipulated in the consent agreement or neither admits nor denies specific factual allegations contained in the complaint; consents to the assessment of any stated civil penalty, to the issuance of any specified compliance or corrective action order, to any conditions specified in the consent agreement, and to any stated Permit Action; and waives any right to contest the allegations and its right to appeal the proposed final order accompanying the consent agreement. Where complainant elects to commence a proceeding pursuant to § 22.13(b), the consent agreement shall also contain the elements described at § 22.14(a)(1)-(3) and (8). The parties shall forward the executed consent agreement and a proposed final order to the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board.

40 CFR 22.14(a)(3): **Content of Complaint.** Each complaint shall include: A concise statement of the factual basis for each violation alleged;

CWA Consent Agreement: Section IV Allegations of Facts and Law Paragraphs 53-58

52. The EPA reviewed the October 2021 SPCC Plan and found deficiencies in portions of the plan, which EPA alleged to Respondent did not comply with the requirements in 40 C.F.R. part 112.

53. The October 2021 SPCC Plan did not comply with the requirements in 40 C.F.R. § 112.7(a)(3).

54. The October 2021 SPCC Plan did not comply with the requirements of 40 C.F.R. § 112.7(a)(4).

55. The October 2021 SPCC Plan did not comply with the requirements of 40 C.F.R. § 112.7(e).

56. The October 2021 SPCC Plan did not comply with the requirements of 40 C.F.R. § 112.9(b)(1).

57. The October 2021 SPCC Plan did not comply with the requirements of 40 C.F.R. § 112.9(c).

58. The October 2021 SPCC Plan did not comply with the requirements of 40 C.F.R. § 112.9(d)(iv).

Regulations Alleged to be Violated

40 CFR 112.7(a)(3): Describe in your Plan the physical layout of the facility and include a facility diagram, which must mark the location and contents of each fixed oil storage container and the storage area where mobile or portable containers are located. The facility diagram must identify the location of and mark as “exempt” underground tanks that are otherwise exempted from the requirements of this part under [§ 112.1\(d\)\(4\)](#). The facility diagram must also include all transfer stations and connecting pipes, including intra-facility gathering lines that are otherwise exempted from the requirements of this part under [§ 112.1\(d\)\(11\)](#). You must also address in your Plan:

- (i) The type of oil in each fixed container and its storage capacity. For mobile or portable containers, either provide the type of oil and storage capacity for each container or provide an estimate of the potential number of mobile or portable containers, the types of oil, and anticipated storage capacities;
- (ii) Discharge prevention measures including procedures for routine handling of products (loading, unloading, and facility transfers, etc.);
- (iii) Discharge or drainage controls such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge;
- (iv) Countermeasures for discharge discovery, response, and cleanup (both the facility's capability and those that might be required of a contractor);
- (v) Methods of disposal of recovered materials in accordance with applicable legal requirements; and
- (vi) Contact list and phone numbers for the facility response coordinator, National Response Center, cleanup contractors with whom you have an agreement for response, and all appropriate Federal, State, and local agencies who must be contacted in case of a discharge as described in [§ 112.1\(b\)](#).

40 CFR 112.7(a)(4): Unless you have submitted a response plan under [§ 112.20](#), provide information and procedures in your Plan to enable a person reporting a discharge as described in [§ 112.1\(b\)](#) to relate information on the exact address or location and phone number of the facility; the date and time of the discharge, the type of material discharged; estimates of the total quantity discharged; estimates of the quantity discharged as described in [§ 112.1\(b\)](#); the source of the discharge; a description of all affected media; the cause of the discharge; any damages or injuries caused by the discharge; actions being used to stop, remove, and mitigate the effects of the discharge; whether an evacuation may be needed; and, the names of individuals and/or organizations who have also been contacted.

40 CFR 112.7(e): **Inspections, tests, and records.** Conduct inspections and tests required by this part in accordance with written procedures that you or the certifying engineer develop for the facility. You must keep these written procedures and a record of the inspections and tests, signed by the appropriate supervisor or inspector, with the SPCC Plan for a period of three years. Records of inspections and tests kept under usual and customary business practices will suffice for purposes of this paragraph.

40 CFR 112.9(b)(1): **Oil production facility drainage.** At tank batteries and separation and treating areas where there is a reasonable possibility of a discharge as described in [§ 112.1\(b\)](#), close and seal at all times drains of dikes or drains of equivalent measures required under [§ 112.7\(c\)\(1\)](#), except when draining uncontaminated rainwater. Prior to drainage, you must inspect the diked area and take action as provided in [§ 112.8\(c\)\(3\)\(ii\)](#), [\(iii\)](#), and [\(iv\)](#). You must remove accumulated oil on the rainwater and return it to storage or dispose of it in accordance with legally approved methods.

40 CFR 112.9(c): **Oil production facility bulk storage containers.**

- (1) Not use a container for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage.
- (2) Except as described in [paragraph \(c\)\(5\)](#) of this section for flow-through process vessels and [paragraph \(c\)\(6\)](#) of this section for produced water containers and any associated piping and appurtenances downstream from the container, construct all tank battery, separation, and treating facility installations, so that you provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. You must safely confine drainage from undiked areas in a catchment basin or holding pond.

(3) Except as described in [paragraph \(c\)\(5\)](#) of this section for flow-through process vessels and [paragraph \(c\)\(6\)](#) of this section for produced water containers and any associated piping and appurtenances downstream from the container, periodically and upon a regular schedule visually inspect each container of oil for deterioration and maintenance needs, including the foundation and support of each container that is on or above the surface of the ground.

(4) Engineer or update new and old tank battery installations in accordance with good engineering practice to prevent discharges. You must provide at least one of the following:

(i) Container capacity adequate to assure that a container will not overflow if a pumper/gauger is delayed in making regularly scheduled rounds.

(ii) Overflow equalizing lines between containers so that a full container can overflow to an adjacent container.

(iii) Vacuum protection adequate to prevent container collapse during a pipeline run or other transfer of oil from the container.

(iv) High level sensors to generate and transmit an alarm signal to the computer where the facility is subject to a computer production control system.

(5) **Flow-through process vessels.** The owner or operator of a facility with flow-through process vessels may choose to implement the alternate requirements as described below in lieu of sized secondary containment required in [paragraphs \(c\)\(2\)](#) and [\(c\)\(3\)](#) of this section.

(i) Periodically and on a regular schedule visually inspect and/or test flow-through process vessels and associated components (such as dump valves) for leaks, corrosion, or other conditions that could lead to a discharge as described in [§ 112.1\(b\)](#).

(ii) Take corrective action or make repairs to flow-through process vessels and any associated components as indicated by regularly scheduled visual inspections, tests, or evidence of an oil discharge.

(iii) Promptly remove or initiate actions to stabilize and remediate any accumulations of oil discharges associated with flow-through process vessels.

(iv) If your facility discharges more than 1,000 U.S. gallons of oil in a single discharge as described in [§ 112.1\(b\)](#), or discharges more than 42 U.S. gallons of oil in each of two discharges as described in [§ 112.1\(b\)](#) within any twelve month period, from flow-through process vessels (excluding discharges that are the result of natural disasters, acts of war, or terrorism) then you must, within six months from the time the facility becomes subject to this paragraph, ensure that all flow-through process vessels subject to this subpart comply with [§ 112.9\(c\)\(2\)](#) and [\(c\)\(3\)](#).

(6) **Produced water containers.** For each produced water container, comply with [§ 112.9\(c\)\(1\)](#) and [\(c\)\(4\)](#); and [§ 112.9\(c\)\(2\)](#) and [\(c\)\(3\)](#), or comply with the provisions of the following paragraphs (c)(6)(i) through (v):

(i) Implement, on a regular schedule, a procedure for each produced water container that is designed to separate the free-phase oil that accumulates on the surface of the produced water. Include in the Plan a description of the procedures, frequency, amount of free-phase oil expected to be maintained inside the container, and a Professional Engineer certification in accordance with [§ 112.3\(d\)\(1\)\(vi\)](#). Maintain records of such events in accordance with [§ 112.7\(e\)](#). Records kept under usual and customary business practices will suffice for purposes of this paragraph. If this procedure is not implemented as described in the Plan or no records are maintained, then you must comply with [§ 112.9\(c\)\(2\)](#) and [\(c\)\(3\)](#).

(ii) On a regular schedule, visually inspect and/or test the produced water container and associated piping for leaks, corrosion, or other conditions that could lead to a discharge as described in [§ 112.1\(b\)](#) in accordance with good engineering practice.

(iii) Take corrective action or make repairs to the produced water container and any associated piping as indicated by regularly scheduled visual inspections, tests, or evidence of an oil discharge.

(iv) Promptly remove or initiate actions to stabilize and remediate any accumulations of oil discharges associated with the produced water container.

(v) If your facility discharges more than 1,000 U.S. gallons of oil in a single discharge as described in [§ 112.1\(b\)](#), or discharges more than 42 U.S. gallons of oil in each of two discharges as described in [§ 112.1\(b\)](#) within any twelve month period from a produced water container subject to this subpart (excluding discharges that are the result of natural disasters, acts of war, or terrorism) then you must, within six

months from the time the facility becomes subject to this paragraph, ensure that all produced water containers subject to this subpart comply with [§ 112.9\(c\)\(2\)](#) and [\(c\)\(3\)](#).

40 CFR 112.9(d)(iv): **Facility transfer operations, oil production facility.** Prepare and implement a written program of flowline/intra-facility gathering line maintenance. The maintenance program must address your procedures to:

- (i) Ensure that flowlines and intra-facility gathering lines and associated valves and equipment are compatible with the type of production fluids, their potential corrosivity, volume, and pressure, and other conditions expected in the operational environment.
- (ii) Visually inspect and/or test flowlines and intra-facility gathering lines and associated appurtenances on a periodic and regular schedule for leaks, oil discharges, corrosion, or other conditions that could lead to a discharge as described in [§ 112.1\(b\)](#). For flowlines and intra-facility gathering lines that are not provided with secondary containment in accordance with [§ 112.7\(c\)](#), the frequency and type of testing must allow for the implementation of a contingency plan as described under [part 109 of this chapter](#).
- (iii) Take corrective action or make repairs to any flowlines and intra-facility gathering lines and associated appurtenances as indicated by regularly scheduled visual inspections, tests, or evidence of a discharge.
- (iv) Promptly remove or initiate actions to stabilize and remediate any accumulations of oil discharges associated with flowlines, intra-facility gathering lines, and associated appurtenances.

As an aside if Respondent is going to make corrections, section IV paragraph 60 needs to be edited when it refers to the prior paragraph (change from paragraph 60 to paragraph 59).

Barbara

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From: R8 Hearing Clerk <R8_Hearing_Clerk@epa.gov>
Sent: Wednesday, August 6, 2025 2:35 PM
To: Nann, Barbara <nann.barbara@epa.gov>
Subject: CWA CAFO for review and signature

Attached is a CWA CAFO for review and signature. There was public notice. No comments were received.

Kate Tribbett
Regional Hearing Clerk
U.S. EPA Region 8

