EXHIBIT CX 20
Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act

CIVIL PENALTY POLICY
FOR SECTION 311(b)(3) AND SECTION 311(j)
OF THE CLEAN WATER ACT

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I. INTRODUCTION AND BACKGROUND

The Oil Pollution Act of 1990 ("OPA"), part of which amended Section 311 of the Clean Water Act ("Act" or "CWA"), became law shortly after the Exxon Valdez spilled over 11 million gallons of oil into Alaska's Prince William Sound. The Oil Pollution Act provided EPA with new authorities to enforce Section 311(b)(3) and Section 311(j) of the CWA, 33 U.S.C. §§1321(b)(3) and (j). Section 311(b)(3) prohibits the discharge of threshold amounts of oil or hazardous substances to navigable waters of the United States. To reduce the likelihood of a mishap, regulations issued under Section 311(j) (published at 40 C.F.R. Part 112) require facilities that store oil in significant amounts to prepare spill prevention plans and to adopt certain measures to keep accidental releases from reaching navigable waters. Certain types of facilities that pose a greater risk of release must also develop plans to respond promptly to clean up any spills that do occur.

Sections 311(b)(6) and (7) of the CWA, 33 U.S.C. §§1321(b)(6) and (7), authorize civil penalties for violation of any of these requirements. The penalty monies are deposited in the Oil Spill Liability Trust Fund, administered by the U.S. Coast Guard, and are used to help cover any spill cleanup costs incurred by the government. Civil penalties reduce the likelihood of a spill by providing an incentive to the violator and to other members of the regulated community to comply with the Act's requirements, help replenish funds that are used to clean up the environment, and provide a level playing field for businesses that meet their obligations under the law.

A. Purpose and Scope

This civil penalty policy is provided for the use of EPA litigation teams in establishing appropriate penalties in settlement of civil administrative and judicial actions for violations of Sections 311(b)(3) and 311(j) of the Clean Water Act. It does not apply to criminal cases that may be brought for violations of Section 311 of the Act, nor to the civil enforcement of response orders issued under Section 311(c) or (e) of the Act, 33 U.S.C. §1321(c) or (e). This policy sets forth how the Agency expects to exercise its enforcement discretion in determining the minimum civil penalty settlement for violations of Section 311(b)(3) and (j) of the Clean Water Act, and states the Agency's views as to the proper allocation of enforcement resources by clarifying the minimum penalty amount that EPA may accept in settlement of a case. This policy also provides general guidelines on administrative civil penalty pleading practices under Sections 311(b) and (j) of the Clean Water Act.

This policy is intended as guidance, and is not final agency action. It does not create any rights, duties, obligations, or defenses, implied or otherwise, in any third parties. It does not affect the right of any respondent or defendant to decline to settle a case in favor of litigating liability or the proposed penalty amount, and it does not bind judges or presiding officers in their assessments of penalties. Upon concurrence by the Water Enforcement Division in ORE, this policy may be waived on a case-by-case basis.

This policy shall be implemented no later than thirty days after its issuance. It applies to all Section 311(b)(3) and (j) actions filed after its implementation. It also applies to all cases that are pending when it is implemented, but in which the government and the respondent or defendant have not yet reached agreement in principle on the amount of the civil penalty.

B. Statutory Authorities

OPA increased penalties for violations of Section 311 of the Clean Water Act. In administrative cases, Section 311(b)(6) of the Act, as amended, 33 U.S.C. §1321(b)(6), authorizes EPA to assess Class I or Class II administrative penalties for the violation of Section 311(b)(3) or Section 311(j). A Class I penalty may be assessed in an amount of up to $10,000 per violation, not to exceed $25,000. For the reasons provided in earlier Agency guidance interpreting a predecessor provision of the Clean Water Act, for liability purposes each violation should also be tabulated on a daily basis.[1] A Class II penalty may be assessed in an amount of up to $10,000 per day of violation, not to exceed $125,000. These and all other statutory provisions cited in this policy have been increased by ten percent, for events occurring after January 30, 1997, by the Debt Collection Improvement Act of 1996 (DCIA)[2] and its implementing regulations published at 40 C.F.R. Part 19. Future across-the-board inflation adjustments under the DCIA are to be published not less often than every four years.

OPA also established new judicial sanctions. A person who violates Section 311(b)(3) of the Act is subject to a civil penalty of up to $25,000 per day of violation, or up to $1,000 per barrel of oil or per unit of reportable quantity of CWA-listed hazardous substance discharged. In instances of gross negligence or willful misconduct, these penalties increase to a $100,000 minimum and a maximum of $3,000 per barrel or unit of reportable quantity discharged. EPA interprets this to mean that in the judicial forum the government may elect whether per day or volumetric penalties may apply according to how it pleads its case, or plead both approaches in the alternative.[3] The law also provides that a person subject to regulations implementing the spill

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[1] The Class I "per violation" language was borrowed from the Class I approach in Section 309(g) of the Act. *See* H.R. Rep. No. 653, 101st Cong., 2d Sess. 153 (August 1, 1990)(Conference Committee Report on H.R. 1465). We adopt here the rule and reasoning provided in 1987 guidance interpreting Section 309(g). *See* "Guidance on the Effect of Clean Water Act Amendment Civil Penalty Assessment Language," OW/OECM, August 28, 1987 (published in the CWA Compliance/Enforcement Compendium, 1997 ed., at III.B.8).

[2] 31 U.S.C. 3701 note; Publ. L. 104-134, 110 Stat. 1321 (1996). *See* 61 Fed. Reg. 69,359 (December 31, 1996)(includes *erratum* that Section 311(b)(7)(B) spill penalty has been adjusted from $25,000 per day to $11,000 per day, instead of $27,500 per day) and 62 Fed. Reg. 13514-17 (March 20, 1997) (Correcting *errata* in December 31, 1996, publication as a technical correction; maintaining the January 30, 1997, effective date in all cases).

[3] This is based on the plain meaning of the disjunctive statutory language, which does not limit a penalty request, and Senator Lieberman's statement in debate during consideration of OPA that, "It was my intent in writing the penalty provisions of my legislation, which have been substantially adopted in this bill that, in the event of a spill, the Government apply the penalty provisions in a manner which will punish the violator and deter and

prevention and response program of Section 311(j) of the Act may be assessed civil penalties of up to $25,000 per day of violation. These statutory penalties have also been increased by ten percent for events occurring after January 30, 1997.

Pursuant to Section 311(b)(8) of the Act, 33 U.S.C. §1321(b)(8), a Section 311 civil penalty assessment is based on the following factors:

- The seriousness of the violation or violations;
- The degree of culpability involved;
- The nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge;
- Any history of prior violations;
- Any other penalty for the same incident;
- Any other matters as justice may require;
- The economic impact of the penalty on the violator; and
- The economic benefit to the violator, if any, resulting from the violation.

If negotiations break down and a case is litigated, the judge or presiding officer must consider these elements to determine the amount of any civil penalty. Agency negotiators themselves are not explicitly required to use the Section 311(b)(8) assessment factors. But since settlement negotiations are always conducted in the shadow of the courtroom, this policy uses each statutory factor (as well as other necessary, but extrinsic, considerations) to guide the Agency bottom-line settlement position and to allow it to be coordinated with any subsequent litigating position. Because failed penalty negotiations often lead directly to litigation, the enforcement team should establish and keep an accurate record of each of these factors.

Four of the statutory factors (seriousness, culpability, mitigation efforts, history of violations) relate to the severity of the violator's actions, and form the gravity component of the calculation. The next three factors (other penalties incurred, other matters as justice may require, and economic impact on the violator) are broad considerations that may lead to case-by-case adjustments of the gravity component based on specific circumstances. Calculating the gravity component is described in Sections III. B and C, below. The violator’s economic benefit is added to the gravity component to form the base penalty amount.

In limited circumstances, for settlement purposes only, the bottom line settlement amounts may be further adjusted based on litigation considerations, and based on Supplemental Environmental Projects (SEP's). These are not mentioned in the statute, and therefore are not relevant to a judge or presiding officer deciding any contested proceeding.

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prevent future violations. Large civil penalties . . . are also especially important because, in certain cases, the liability of the spiller for cleanup costs under Federal law is limited by the provisions of this bill; aggressive penalties may need to compensate for this limited liability.” 135 Cong. Rec. S11,545 (daily ed. August 2, 1990)(statement of Sen. Lieberman).

In all cases, however, EPA is limited in settlement and litigation to seeking no more than the violator's statutory maximum civil penalty liability. If a particular application of this policy results in a settlement figure greater than the available statutory maximum, subject to choice of forum concerns (see I.C below) the settlement bottom line must be reduced to conform to statutory limitations. All civil penalties paid pursuant to Section 311 of the Act, whether imposed administratively or judicially, are to be deposited in the Oil Spill Liability Trust Fund.[4] This fund is administered by the National Pollution Funds Center of the Coast Guard pursuant to Department of Transportation delegations and Section 7 of Presidential Executive Order 12777 (October 18, 1991).

C. Choice of Forum

The Agency enforcement team should apply this policy to determine whether to seek a penalty administratively or judicially. If the bottom line requires higher penalties than can be achieved in an administrative proceeding, EPA should refer the case to the Department of Justice for judicial enforcement. EPA staff may also choose to refer a Section 311 enforcement case for judicial action for other reasons, such as the need for injunctive relief.

In a case where a spill resulted from gross negligence or willful misconduct, Section 311(b)(7)(D) of the Act, 33 U.S.C. §1321(b)(7)(D), requires use of the judicial forum. As amended by the DCIA, it provides for a minimum penalty of $100,000 for events occurring before January 31, 1997, or a minimum of $110,000 for events occurring on or after that date.

II. ADMINISTRATIVE PENALTY PLEADING GUIDANCE

In judicial cases, the United States does not request a specific proposed penalty, but instead paraphrases the Clean Water Act in reciting a request for a penalty "up to" the statutory maximum. This is sometimes referred to as "notice pleading" for penalties. By contrast, Agency administrative complaints under proposed 40 C.F.R. §22.14(a)(4) (63 Fed. Reg. 9464, 9469, 9485 [February 25, 1998]) either may include a form of notice pleading or use a specific penalty request. (During their pendency, the proposed changes to 40 CFR Part 22 are to be used as procedural guidance for the administrative assessment of penalties under Section 311(g)(6) of the Clean Water Act.[5]) Although this section of the policy provides general guidelines on how EPA may select an appropriate penalty amount in an administrative complaint, it does not direct when an Agency litigation team should use penalty notice pleading and when it should plead for a sum certain.

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[4] *See* Section 4304 of OPA (Pub.L. 101-380, tit. IV, §4304, 104 Stat. 484) and 26 U.S.C. §9509(b)(8).

[5] *See also* 63 Fed. Reg. 9478 (February 25, 1998)(addressing Class I, non-APA cases).

The Agency litigation team may elect to adapt the settlement methodology in Part III of this policy ("Minimum Settlement Penalty Calculation") to establish a definitive penalty request in an administrative complaint. After reasonable examination of the relevant facts and circumstances (including any known defenses), the litigation team, when proposing a specified penalty in an administrative complaint, should in good faith make the most favorable factual assumptions, legal arguments, and judgments possible on behalf of the Agency. As a practical matter, any specific penalty amount proposed in an administrative complaint, unless the complaint is subsequently amended, will be the maximum that the enforcement team may seek at hearing, and generally will provide a starting point for settlement negotiations. Such an administrative penalty request therefore should be higher than the bottom line settlement amount determined under Part III of this policy.[6] Although appropriate in settlement calculations, Part III.F, "Additional Reductions for Settlements," should not be applied in drafting a complaint penalty figure.

A proposed penalty should not be inconsistent with the statutory factors in Section 311(b)(8), because those factors would ultimately be the basis of the presiding officer's penalty assessment. In any Class II complaint seeking a specific penalty, the Agency litigation team should also take into account the requirements of the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), P.L. 104-121 (1996), if the respondent qualifies as a small business under that statute.[7] SBREFA by its terms does not apply to non-Administrative Procedure Act ("non-APA"), Class I cases.[8] For a more extended discussion of SBREFA, *see* "Interim Guidance on Administrative and Civil Judicial Enforcement Following Recent Amendments to the Equal Access to Justice Act," ORE/OECA, May 28, 1996 ("SBREFA Guidance").

When SBREFA does not apply, the "Adjustments" in Part III should not normally be used in drafting a definitive complaint penalty figure. These "Adjustments" are mitigating factors that are more appropriately asserted by the respondent, since at the outset of the case exculpatory or mitigating circumstances generally will be more accessible to the alleged violator than to the Agency.

III. MINIMUM SETTLEMENT PENALTY CALCULATION

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[6] *See* "Distinctions Among Pleading, Negotiating and Litigating Civil Penalties for Enforcement Cases," OECM/OW, January 19, 1989 (published in the CWA Compliance/Enforcement Compendium, 1997 ed., at IV.C.17), for a detailed discussion of this issue.

[7] *See* 13 C.F.R. §121.

[8] Sections 331 and 332 of SBREFA amend the Equal Access to Justice Act ("EAJA"), 28 U.S.C. §2412; 5 U.S.C. §504 and EAJA apply by their terms to APA proceedings only. Consequently, SBREFA does not apply to Class I (non-APA) Section 311 complaints.

A. Introduction

Before the filing of the complaint, the Agency litigation team must use the following guidelines to determine the minimum amount the Agency will accept in settlement for counts based on violations of Section 311(b)(3) or 311(j) of the Act, or receive a case-specific exemption from the Director of the Water Enforcement Division in ORE. This amount, along with the appropriate Appendix worksheet and a supporting rationale, should be included in the enforcement-confidential portion of the case file. After a complaint is filed, as the Agency receives more relevant information regarding liability and penalty issues, the litigation team should adjust its settlement figure accordingly, documenting the rationale for the changes.

The bottom-line figure resulting from application of this Section 311 civil penalty settlement policy and the specific calculation that led to it are not public. Each is privileged, enforcement-confidential information. It is work product developed for negotiation purposes, and should not be shared with administrative judges, respondents or defendants, or the public.[9] This policy itself, however, is public and not confidential.

In calculating the bottom-line settlement figure, the case development team should assume that all the allegations in the complaint will be successfully proven, except to the extent this policy specifically allows for the incorporation of litigation considerations into the penalty calculation. The subjective aspects of the various penalty factors should be applied conservatively in determining the settlement bottom line because that figure represents the minimum the Agency will accept in settlement, which may be less than the penalty amount that the litigation team considers otherwise ideally suited to the violation.

In creating the gravity penalty methodologies provided below, EPA has taken into account the 1997 effects of the DCIA on its statutory civil penalty claims. When further DCIA adjustments to Section 311 penalty authorities are published in the Federal Register, the dollar amounts provided below are deemed to be increased by the same inflation factor without need to republish this policy.[10] EPA may, of course, republish this policy to clarify the newly adjusted settlement amounts.

B. Preliminary Gravity Calculation

[9] In administrative cases, which are governed by 40 C.F.R. Part 22, the settlement figure is *not* subject to any disclosure requirements of 40 C.F.R. § 22.14(a).

[10] The revised figures apply to all actions filed after the DCIA regulatory effective date as well as all filed cases in which the government and the respondent or defendant have not yet reached an agreement in principle on the amount of the civil penalty.

Although the arithmetic methodology of the gravity components for violations of each Section 311 enforcement program is similar, the nature of violations of the 311(j) and 311(b)(3) programs are substantially different. Consequently, this settlement policy provides separate discussion of gravity for each program. Both of the methodologies begin with a "seriousness" figure and then provide additional, statutorily-based adjustment factors. For both the Section 311(j) and 311(b)(3) programs, each adjustment factor calculation acts upon and replaces the immediately preceding calculation. The settlement methodologies, then, use an initial "seriousness" figure subject to a chain of sequentially applied adjustments.

1. *Section 311(j) -- Spill Prevention Control and Countermeasure (SPCC) and Facility Response Plan (FRP) Violations*

The gravity portion of the settlement penalty for violations of CWA Section 311(j) is to be determined by applying the following sequential steps.

STEP 1: SERIOUSNESS

The seriousness of a 311(j) violation depends, in part, on the risk posed to the environment as a result of the violation. Risk can encompass the extent of the violation, the likelihood of a spill, the sensitivity of the environment around the facility, and the duration of the violation. The extent of the violation, which also contributes to the seriousness of the violation, depends on the storage capacity of the violator's facility, the existence and adequacy of secondary containment, the degree and nature of the violations of the relevant requirements, and the duration of the violation. The sensitivity of the environment can be characterized by considering the potential environmental impact from a worst case discharge at the facility.

Step 1.a: Apply matrix. Determine an initial figure from the following table. Within each range, the Agency litigation team should exercise discretion, considering storage capacity and extent of noncompliance only, since other considerations are incorporated in later steps.

Extent of Noncompliance	**Storage Capacity of the Facility in gallons**			
	Less than 42,000	42,001 to 200,000	200,001 to 1 million	More than 1 million*
Minor Noncompliance:	$500 to $3,000	$2,000 to $6,000	$5,000 to $12,000	$8,000 to $20,000
Moderate Noncompliance:	$3,000 to $8,000	$6,000 to $15,000	$12,000 to $25,000	$20,000 to $50,000
Major Noncompliance:	$8,000 to $20,000	$15,000 to $30,000	$25,000 to $60,000	Not less than $50,000

* *This column also applies to all Facility Response Plan violators.*

Extent of Noncompliance: Use the following criteria to determine extent of noncompliance:

! *Minor Noncompliance*. Cumulatively, the violations have only a minor impact on the ability of the respondent to prevent or respond to worst case spills through the development and implementation of a plan.

! *Moderate Noncompliance*. Cumulatively, the violations have a significant impact on the ability of the respondent to prevent or respond to worst case spills through the development and implementation of a plan.

! *Major Noncompliance*. Cumulatively, the violations essentially undermine the ability of the respondent to prevent or respond to worst case spills through the development and implementation of a plan.

Examples in each category are provided below. These examples are for purposes of illustration only. The category actually used should be based on the criteria provided above, taking into consideration the specific facts of the case and the number of violations involved, even if that category is different than the one suggested by the list of examples below.

SPCC VIOLATIONS

Minor noncompliance: Failure to review plan after three years; failure to amend plan after minor facility change; failure to have amendment certified.

Moderate noncompliance: Plan not available during the normal 8-hour work day; inadequate or incomplete plan; inadequate or incomplete implementation of plan (but neither a complete lack of secondary containment, nor grossly inadequate secondary containment); no plan, but adequate secondary containment; implementation of applicable state plan that does not reference SPCC or meet all SPCC requirements; failure to amend or implement amended plan after spill or any major facility change; failure to submit required information after a spill; failure to certify plan.

Major noncompliance: No SPCC plan and no secondary containment; failure to implement SPCC plan; inadequate or incomplete plan implementation resulting in (1) grossly inadequate or no secondary containment or (2) hazardous site conditions.

FRP VIOLATIONS

Minor noncompliance: Failure to maintain certificate of nonapplicability; improper plan format; failure to provide copy of plan to local or State authority; no annual review of FRP to ensure consistency with the NCP/ ACP; failure to update or submit plan reflecting minor facility changes.

Moderate noncompliance: Submission of inadequate plan; submission of plan inconsistent with NCP/ACP; late submission of plan; failure to update or amend plan reflecting major facility changes; failure to amend or resubmit plan in response to RA notification; inadequate, incomplete, or late implementation of plan (without presenting a major risk); failure to develop or conduct a drill/exercise program.

Major noncompliance: Failure to submit FRP; substantial failure to implement FRP; inadequate or incomplete plan implementation resulting in major risk of significant and substantial harm to the environment; failure to maintain current proof of equipment and personnel available to respond to a worst case discharge; intentional or knowing violations.

Because spill response plan requirements established under Section 311(j)(5) and 40 C.F.R. §112.20 assume the existence of a facility posing a significant risk of harm, penalties for any facility that is subject to the facility response plan requirements should be read under the "more than 1 million gallons" column on the right, regardless of the facility's actual storage capacity.

Step 1.b: Adjust the amount determined from the matrix to reflect the potential environmental impact of a worst case discharge. Choose the most serious applicable category:

! *Major impact.* A discharge would likely have a significant effect on human health, an actual or potential drinking water supply, a sensitive ecosystem, or wildlife (especially endangered species), due to factors such as proximity to water or adequacy of containment. Upward adjustment of 25% to 50%.

! *Moderate impact.* A discharge would likely have a significant affect on navigable waters (other than a drinking water supply), adjoining shorelines, or vegetation (other than a sensitive ecosystem) due to factors such as proximity to water or adequacy of containment. Upward adjustment of up to 25%.

! *Minor impact.* No adjustment.

Step 1.c: Adjust the amount from **STEP 1.b** to account for the duration of the violation. Determine the number of months that the violation continued. For each month, add one half of one percent to the amount from Step 1.b (e.g., if the violation continued for 32 months, increase the amount from the previous step by 16%), up to 30% maximum.

STEP 2: CULPABILITY

Consider the degree to which the respondent should have been able to prevent the violation, considering the sophistication of the respondent and the resources and information available to it, and any history of regulatory staff explaining to the respondent its legal obligations or notifying the respondent of violations. Depending upon the degree of culpability, the litigation team may increase the amount from **STEP 1** by as much as 75%.

STEP 3: MITIGATION

Section 311(b)(8) requires that in assessing a penalty the judge or presiding officer must consider the "nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge." Though a violation of SPCC regulations increases the threat of a discharge rather than actually causing a discharge, this factor can be taken into account in 311(j) cases by considering how quickly the violator comes into compliance, thereby mitigating the threat of a discharge. The litigation team should use the following guidelines:

- **!** If the violator qualifies for application of EPA's "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations Policy" (60 Fed. Reg. 66706, December 22, 1995) ("Audit Policy"), the terms of that policy apply.

- **!** When the violator comes into compliance before being notified of its violation by regulatory staff orally or in writing, reduce the amount from **STEP 2** by up to 25%.

- **!** When the violator, after notification of its violation, comes into compliance within a reasonable time period not to exceed six months: No adjustment.

This is a downward adjustment only because any failure to come into compliance promptly after being informed of the violation is accounted for in **STEP 2** (Culpability).

STEP 4: HISTORY OF PRIOR VIOLATIONS

Adjust the amount from **STEP 3** if the respondent has a relevant history of violations within the past five years. Consider violations of SPCC and facility response plan regulations, discharges in violation of Section 311(b)(3), and any violation of an environmental statute that relates to the respondent's ability to prevent or mitigate a discharge in violation of Section 311(b)(3). Related violations, for example, could include certain operation and maintenance

violations that indicate a respondent's inattention to pollution control requirements. Relevant violations at any other facility under common ownership or control should be considered under this Step.

Violations include admitted violations (such as discharge monitoring reports or other required self-reporting), adjudicated violations, findings of violations by EPA or other agencies that have not been withdrawn or overturned by a reviewing authority, and cases that were settled by consent and involved the payment of a penalty (whether or not liability was admitted). If there is a history of such violations, the litigation team may increase the **STEP 3** amount by up to 100%, depending on the frequency and severity of such past violations.

2. Section 311(b)(3) -- Discharge Violations

STEP 1: SERIOUSNESS

The *potential* environmental impact of a discharge, the amount of the hazardous substance or oil involved, and (in certain circumstances) the duration of the discharge are critical factors in determining the seriousness of a violation of Section 311(b)(3) of the Act. Potential harm is distinct from actual harm because mitigation efforts can reduce the actual harm. Mitigation efforts are considered in **STEP 3** below; this initial Step considers only risk factors.

Alternative A: To determine the seriousness component of the penalty when potential environmental impact and quantity discharged are the most significant elements of the Section 311(b)(3) violation, select an amount within the appropriate cell in the following table.

Potential Impact	**Quantity Discharged (Barrels/RQ)**[11]				
	Less than 5	5 to 19	20 to 79	80 to 125	More than 125
Minor Impact:	$400 to $2,000	$1,000 to $6,000	$5,000 to $12,000	$9,000 to $20,000	$100 to $250 per bbl/RQ
Moderate Impact:	$2,000 to $7,000	$6,000 to $12,000	$10,000 to $25,000	$16,000 to $45,000	$250 to $500 per bbl/RQ
Major Impact:	$7,000 to $12,000	$12,000 to $30,000	$18,000 to $55,000	$45,000 to $90,000	$500 to $1000 per bbl/RQ

[11] *See* Section 311(b)(7)(A) of the Act, 33 U.S.C. §1321(b)(7)(A).

Quantity: Use the entire quantity discharged in violation of Section 311(b)(3), determined in accordance with any applicable Agency guidance or interpretation. The quantity of oil is measured by the number of barrels (one barrel equals 42 gallons). The quantity of hazardous substances is measured in reportable quantities (RQ), which are listed for each substance in 40 C.F.R. Part 117.

Potential Environmental Impact: The environmental impact of a spill can be greatly reduced by intervening factors that are not attributable to the discharger, such as intervention by independent third parties or luck (wind, tides, weather, time of day, etc.). These external factors should not affect the penalty amount. This factor also should not be affected by any mitigation efforts, since they are considered separately in **STEP 3** below. This factor should therefore be based on the *risk* to the environment caused by the spill, and not simply the actual harm it caused. Appropriate considerations include the proximity of the facility to sensitive areas (such as inhabited areas, drinking water, wildlife habitat), and the nature of the water body or shoreline potentially affected or endangered, such as pristine habitat for endangered species, a drinking water source, or a highly polluted industrial waterway. Use the following criteria to determine potential environmental impact:

! *Major Impact*. The discharge posed a significant threat to human health, an actual or potential drinking water supply, a sensitive ecosystem, or wildlife (especially endangered species).

! *Moderate Impact*. The discharge posed a significant threat to navigable waters (other than an actual or potential drinking water supply), adjoining shorelines, or vegetation (other than a sensitive ecosystem).

! *Minor Impact*. All other discharges resulting in the entry of oil or a CWA hazardous substance into navigable waters or upon an adjoining shoreline in a reportable quantity.

Alternative B: If there is a reportable quantity of oil or a hazardous substance discharged to an adjoining shoreline or a navigable water of the United States, the duration of the event may be a more significant measure of seriousness than the quantity discharged. In such a case, the Agency litigation team should use the following criteria for this step, *but only if this leads to a higher amount than established by Alternative A:*

! *Major duration***.** There has been a continuous or intermittent discharge representing more than fourteen days of violation. Not less than $100,000.

! *Moderate duration*. There has been a continuous or intermittent discharge representing at least four, but not more than fourteen, days of violation. From $25,000 to $100,000.

! *Minor duration.* There has been a continuous or intermittent discharge representing two or three days of violation. From $3,000 to $25,000.

STEP 2: CULPABILITY

Adjust the dollar amount from **STEP 1** based on the degree of culpability, using the highest applicable criterion:

! If gross negligence or willful misconduct were involved, triple the dollar amount derived in **STEP 1.**

! If gross negligence or willful misconduct were not involved, apply a sliding scale to increase the **STEP 1** amount by up to 50%, depending on the degree of culpability. Culpability in this circumstance can include either an act of commission, such as setting a valve in the wrong position, or by an act of omission, such as failing to check a pipeline for corrosion.

STEP 3: MITIGATION

Adjust the dollar amount from **STEP 2** based on the "nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge," using the following guidelines:

! If the violator otherwise qualifies for the complete elimination of the gravity component under EPA's Audit Policy through a qualifying audit, and the discovered discharges: (a) are reported immediately pursuant to the requirements of Section 311(b)(5), 33 U.S.C. §1321(b)(5), and its implementing regulation, 40 C.F.R. 300.300; (b) are made subject to governmental corrective or preventive measures that are independently enforceable under applicable environmental law; (c) collectively result in minor impact as described in Alternative A of Step 1; and, (d) are not the result of gross negligence or willful misconduct, the gravity component shall be reduced to zero.[12]

[12] A Section 311(b) spill violator never can qualify for a 75% gravity component reduction under the Audit Policy since any discharge that is self-evident enough to be discovered in the ordinary course of business -- without a qualifying audit -- is already subject to the implicit monitoring and explicit reporting provisions of Section 311(b)(5) of the Act. To treat such disclosures as voluntary would undermine the purposes of Section 311 of the Act. There are several reasons why only certain minor, and no moderate or major, spill violations under Section 311 are eligible for mitigation under the Policy. The Audit Policy encourages the identification of violations that might not otherwise be discovered, whereas significant spills are likely to be found in the ordinary course of business or by third parties, even in the absence of auditing. Second, the Policy provides an incentive to prevent violations before they occur, while spills by definition reflect a failure to prevent. Third, penalties for spill violations are returned to the Oil Spill Liability Trust Fund to help cover response costs; failure to recover such penalties in some circumstances may unfairly shift the burden of Fund support to other parties. Finally, Condition D.8 of the Policy itself excludes violations that result in "serious environmental harm."

! If the violator has conducted the best and most prompt response possible (range depending on effort required), reduce at least 5% but not more than 40%.

! If the violator has conducted an adequate response, make no adjustment.

! If the violator has conducted an inadequate response, increase up to 25%.

! If the violator has failed to respond, increase at least 25% but no more than 50%.

Failure by the violator to properly notify the National Response Center also should be considered in this Step if the violator's inadequate notification or lack of notification adversely affected EPA's ability to respond effectively to the discharge or to direct the cleanup. In that case, the respondent's mitigation efforts should be classified as inadequate or worse. A failure to notify may be, independently, a criminal violation of Section 311(b)(5) of the Act, which is beyond the scope of this policy.

STEP 4: HISTORY OF PRIOR VIOLATIONS

Adjust the amount from **STEP 3** if the respondent has a relevant history of violations within the past five years. Consider violations of spill prevention and response regulations, discharges in violation of Section 311(b)(3), and any violation of an environmental statute that relates to the respondent's ability to prevent or mitigate a discharge in violation of Section 311(b)(3). Related violations, for example, could include certain operation and maintenance violations that indicate a respondent's inattention to pollution control requirements. Relevant violations at any other facility under common ownership or control should be considered under this Step.

Violations include admitted violations (such as discharge monitoring reports or other required self-reporting), adjudicated violations, findings of violations by EPA or other agencies that have not been withdrawn or overturned by a reviewing authority, and cases that were settled by consent and involved the payment of a penalty (whether or not liability was admitted). If there is a history of such violations, the litigation team may increase the **STEP 3** amount by up to 100%, depending on the frequency and severity of such past violations.

Further, since a purpose of the Audit Policy is prevention of harm to the environment, an audit-based discovery and reporting of a concluded Section 311 discharge must lead to prevention or correction of the uncovered problem to qualify for any civil penalty reduction. To this end, EPA may invoke other statutory provisions that may apply, such as Sections 309(a), 309(b), (b), 311(c) or 311(e) of the Act, or Section 7003(a) of RCRA, 42 U.S.C. §6973(a), since Section 311(b)(3) of the Act is not directly enforceable through injunctive relief.

C. Adjustments to Gravity

1. *Other Penalty for Same Incident*

If the violator has already paid a penalty to a State or local government for a violation arising out of the same incident, the Agency litigation team may use the prior penalty to offset the statutorily available federal penalty by as much as may be appropriate, taking into account the similarities and dissimilarities of the different laws that are being enforced.

2. *Other Matters as Justice May Require*

The litigation team may use this factor to adjust the proposed penalty amount if there are other relevant factors not set forth above, other than litigation considerations, which are discussed below. Litigation considerations should not be double counted here. The Agency litigation team should document for the case file an explanation of the considerations that were used in applying this factor.

3. *Economic Impact of Penalty on Violator*

Although reliable information regarding the economic impact of the penalty on the violator is unlikely to be available to the Agency prior to issuance or filing of the complaint, the litigation team should take this factor into account to the degree known in establishing a preliminary bottom line penalty amount. Absent reliable information to the contrary, the litigation team should assume that the violator is viable, and that economic impact is minimal and not sufficient to cause a reduction to the proposed settlement. In appropriate cases where known economic impact would otherwise be minimal, the litigation team may increase the penalty amount in order to ensure that there is a sufficient impact to specifically deter the violator from future violations.[13]

This factor should only be applied after analysis of copies of actual federal tax returns, audited financial statements, or financial information of comparable reliability. If an adjustment is made for an inability to pay, the case development team shall fully document its decision in the case file. The litigation team should also consult the SBREFA Guidance to determine if it may apply to this factor.

D. Economic Benefit

Violators frequently obtain an economic benefit by avoiding or delaying necessary compliance costs, by obtaining an illegal profit, by obtaining a competitive advantage, or by a

[13] The Conference Committee's report on the Oil Pollution Act of 1990, H. Rep. 101-653, noted that "Civil penalties should serve primarily as an additional incentive to eliminate human error and thereby reduce the number and seriousness of oil spills." At 154.

combination of these or other factors. Calculate the economic benefit or savings accruing to the violator by the noncompliance, and add that amount to the gravity figure determined above. The recapture of economic benefit prevents a violator of environmental laws from having any financial incentive to disregard its legal obligations. The Agency litigation team should document in the case file how economic benefit is calculated.[14]

Because Section 311(b)(3) establishes a "no discharge" standard for oil or CWA listed hazardous substances in quantities that may be harmful, each person subject to this provision of law has an obligation to make whatever investment is necessary to avoid prohibited discharges. To estimate economic benefit in a Section 311(b)(3) case, the litigation team should, to the extent possible, determine the violator's avoided prevention costs, which may include capital costs, operation and maintenance costs, and training costs. Economic benefit is to be measured in the moment before the Section 311(b)(3) violation occurred, and based solely on avoided costs that would have been incurred prior to the discharge. There should be no offset recognized under this factor for any economic losses the violator incurs as a result of the illegal discharge, such as the cost of lost product, or cleanup or response costs. Cleanup and response costs -- which are independent reasons for a violator to comply with the law -- are already recognized as potentially mitigating factors in **STEP 3**.

In Section 311(j) cases, Agency staff should fully recognize all delayed or avoided costs, such as failure to prepare or implement an SPCC plan under 40 C.F.R. §112.3(b), hire a certified engineer as required by 40 C.F.R. §112.3(d), or prepare and submit a facility response plan pursuant to 40 C.F.R. §112.20.

E. Adjustment for Gross Negligence or Willful Misconduct

If the complaint alleges gross negligence or willful misconduct and use of the policy to this point has led to an amount that is less than the statutory minimum, the penalty figure for the Section 311(b)(3) count must be revised here to the statutory minimum amount. At the time of this writing, that is no less than $100,000 for events occurring before January 31, 1997, and no less than $110,000 for events occurring upon or after that date, pursuant to Section 311(b)(7)(D) of the Act, as amended by the DCIA. This figure may be reduced by applying litigation

[14] The standard method for calculating the economic benefit resulting from a violator's delayed or avoided compliance is through the use of EPA's BEN model. Please refer to the "BEN User's Manual" (Office of Enforcement, December 1993, or any subsequent revision) for specific information on the operation of BEN. In some OPA cases, BEN may be inapplicable. For example, a pipeline operator may have been able to avoid noncompliance by operating its lines at fifty percent capacity, but instead established a risk of noncompliance by operating its lines at a higher capacity in order to enjoy greater product throughput. In this circumstance, a delayed or avoided cost analysis would be inappropriate. In such a case, it is necessary to look at the profit obtained from the extra throughput. Where the litigation team suspects that the violator is obtaining an economic benefit from an illegal profit or other, "non-BEN" means, the team should consult any developed guidance on these subjects or, in the absence of such guidance, consult with Headquarters for further advice.

considerations, if appropriate. Cases involving gross negligence or willful misconduct should be pursued judicially.

F. Additional Reductions for Settlements

1. *Litigation Considerations*

Some enforcement cases may have legal or evidentiary weaknesses, or equitable considerations, that make it likely that a judge or presiding officer would assess a penalty that is less than the bottom line calculated according to the above method. In such circumstances the bottom line penalty amount may be reduced to reflect the government legal staff's best professional judgment as to what penalty a judge or presiding officer might assess.

a. Appropriate and Inappropriate "Litigation Considerations"

While there is no universal list of appropriate litigation considerations, the following factors may be appropriate in evaluating whether the penalty settlement figure exceeds the penalty the Agency would likely obtain at trial:

1. Known problems with the reliability or admissibility of the government's evidence proving liability or supporting a civil penalty.

2. The credibility, reliability, and availability of witnesses.[15]

3. The informed, expressed opinion of the judge assigned to the case (or person appointed by the judge to mediate the dispute), after evaluating the merits of the case.[16]

4. The record of the judge assigned to the case in comparable or related cases. In contrast, the reputation of the judge or the judge's general demeanor, without a specific penalty or legal statement on a similar case, is rarely sufficient as a litigation consideration.

5. Statements by Federal, State or local regulators which the respondent credibly may argue led it to believe it was complying with the federal law under which EPA is seeking penalties.

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[15] The availability of a witness can affect the settlement bottom line if the witness cannot be produced at trial; it does not relate to the inconvenience or expense of producing the witness at trial.

[16] This factor, except as provided below with respect to the record of the judge or other trier of fact, may not be applied in anticipation, or at the stage of initial filing, and should not be applied by taking at face value what a judge might say simply to encourage settlement.

6. A mix of troublesome facts and weak legal argument such that the Agency faces a significant risk of obtaining a negative decision of national significance.

Litigation considerations *do not* include:

1. The Agency's desire to minimize the resource investment in the case to ordinary or minor expense.

2. A generalized goal to avoid litigation or to avoid potentially precedential areas of the law.

3. A duplicative statement of elements included or assumed elsewhere in this policy, such as inability to pay, or other factors as justice may require, or no history of prior violations, or good faith efforts by the violator to minimize or mitigate the threatened or actual discharge.

4. Off-the-record statements by the judge that large penalties are not appropriate before the court has had a chance to evaluate the specific merits of the case.

5. The fact that the protected adjoining shoreline or water of the United States is already polluted or can assimilate additional pollution.

6. The simple failure of a regulatory agency to initiate a timely enforcement action.

b. Factoring Litigation Considerations Into Penalty Calculation

The steps in the penalty calculation method set forth above correspond to the statutory penalty factors set forth in 311(b)(8), which a judge or presiding officer must use in determining the penalty amount. Whenever possible, litigation considerations should be incorporated into the bottom line penalty calculation by identifying the statutory penalty factor or factors that they affect, and adjusting the corresponding steps in the above calculation appropriately.

For example, if the litigation consideration is an evidentiary weakness pertaining to the degree of culpability, that step in the calculation should be adjusted to reflect the possible conclusions as to culpability a judge or presiding officer might reach at a hearing or trial. Similarly, if the litigation consideration is an evidentiary weakness as to the quantity spilled, or as to the potential environmental impact, the corresponding step in the calculation should reflect the possible conclusions a judge or presiding officer might reach after hearing the evidence.

Some litigation considerations may relate to issues that the penalty calculation method outlined above does not address at all, such as evidentiary or legal issues pertaining to establishing liability, or other factors that the litigation team has reason to believe will affect the judge's or presiding officer's decision. In such a case it may be appropriate to adjust the overall penalty without reference to a specific penalty factor or step in the methodology provided above.

Although this policy allows an initial estimate of litigation considerations in order to develop a bottom-line settlement figure, reductions for litigation considerations are likely to be most useful after the Agency obtains an informed view, through discovery and settlement activities, of the weaknesses in its case and the presiding judge's view of the case.

The Agency litigation team should document in the case file the rationale for any adjustments made on account of litigation considerations.

c. Approval of Litigation Considerations

The Agency recognizes that the quantitative evaluation of litigation considerations often reflects subjective legal opinions. Therefore, EPA Regions may reduce the preliminary penalty amount for litigation considerations for up to one-third of the net gravity amount (i.e., gravity as modified by the gravity adjustment factors) without Headquarters approval. Of course, such a reduction must be fully explained and maintained in the case file.

2. Supplemental Environmental Projects

The Interim Revised EPA Supplemental Environmental Projects Policy ("the 1995 SEP policy") applies to administrative and judicial settlements reached under Section 311(b)(3) and Section 311(j) of the Clean Water Act, and it, or any successor policy, is incorporated by reference into this policy. The 1995 SEP policy qualifies a SEP as an action "which the defendant/respondent is **not otherwise legally required to perform.**" [Emphasis in original].

In a Section 311(b)(3) context, this means that spill cleanup activities are not eligible for SEP recognition, since the statutory scheme already recognizes the violator as having cleanup responsibility. The development of an SPCC plan or installation of appropriate containment is not eligible for SEP recognition, since each is already required by regulation. Measures taken to prevent additional discharges in violation of Section 301(a) of the Act, 33 U.S.C. §1311(a), (when the government has made a concurrent unpermitted discharge claim under that provision) may qualify as a SEP if the injunctive relief is beyond the scope of equitable relief that the government may, after litigation, receive from a court pursuant to Section 301(a) of the Act.

EXHIBIT CX 21
EPA Policies on Civil Penalties
#GM - 21 and GM - 22
February 16, 1984

POLICY ON CIVIL PENALTIES

EPA GENERAL ENFORCEMENT POLICY #GM - 21

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

EFFECTIVE DATE: FEB 16 1984

Introduction

This document, Policy on Civil Penalties, establishes a single set of goals for penalty assessment in EPA administrative and judicial enforcement actions. These goals - deterrence, fair and equitable treatment of the regulated community, and swift resolution of environmental problems - are presented here in general terms. An outline of the general process for the assessment of penalties is contained in Attachment A.

A companion document, A Framework for Statute-Specific Approaches to Penalty Assessments, will also be issued today. This document provides guidance to the user of the policy on how to write penalty assessment guidance specific to the user's particular program. The first part of the Framework provides general guidance on developing program-specific guidance; the second part contains a detailed appendix which explains the basis for that guidance. Thus, the user need only refer to the appendix when he wants an explanation of the guidance in the first part of the Framework.

In order to achieve the above Agency policy goals, all administratively imposed penalties and settlements of civil penalty actions should, where possible, be consistent with the guidance contained in the Framework document. Deviations from the Framework's methodology, where merited, are authorized as long as the reasons for the deviations are documented. Documentation for deviations from the Framework in program-specific guidance should be located in that guidance. Documentation for deviations from the program-specific guidance in calculating individual penalties should be contained in both the case files and in any memoranda that accompany the settlements.

The Agency will make every effort to urge administrative law judges to impose penalties consistent with this policy and any medium-specific implementing guidance. For cases that go to court, the Agency will request the statutory maximum penalty in the filed complaint. And, as proceedings warrant, EPA will continue to pursue a penalty no less than that supported by the applicable program policy. Of course, all penalties must be consistent with applicable statutory provisions, based upon the number and duration of the violations at issue.

Applicability

This policy statement does not attempt to address the specific mechanisms for achieving the goals set out for penalty assessment. Nor does it prescribe a negotiation strategy to achieve the penalty target figures. Similarly, it does not address differences between statutes or between priorities of different programs. Accordingly, it cannot be used, by itself, as a basis for determining an appropriate penalty in a specific

action. Each EPA program office, in a joint effort with the Office of Enforcement and Compliance Monitoring, will revise existing policies, or write new policies as needed. These policies will guide the assessment of penalties under each statute in a manner consistent with this document and, to the extent reasonable, the accompanying Framework.

Until new program-specific policies are issued, the current penalty policies will remain in effect. Once new program-specific policies are issued, the Agency should calculate penalties as follows:

- For cases that are substantially settled, apply the old policy.

- For cases that will require further substantial negotiation, apply the new policy if that will not be too disruptive.

Because of the unique issues associated with civil penalties in certain types of cases, this policy does not apply to the following areas:

- CERCLA §107. This is an area in which Congress has directed a particular kind of response explicitly oriented toward recovering the cost of Government cleanup activity and natural resource damage.

- Clean Water Act §311(f) and (g). This also is cost recovery in nature. As in CERCLA §107 actions, the penalty assessment approach is inappropriate.

- Clean Air Act §120. Congress has set out in considerable detail the level of recovery under this section. It has been implemented with regulations which, as required by law, prescribe a non-exclusive remedy which focuses on recovery of the economic benefit of noncompliance. It should be noted, however, that this general penalty policy builds upon, and is consistent with the approach Congress took in that section.

Much of the rationale supporting this policy generally applies to non-profit institutions, including government entities. In applying this policy to such entities, EPA must exercise judgment case-by-case in deciding, for example, how to apply the economic benefit and ability to pay sanctions, if at all. Further guidance on the issue of seeking penalties against non-profit entities will be forthcoming.

Deterrence

The first goal of penalty assessment is to deter people from violating the law. Specifically, the penalty should persuade the violator to take precautions against falling into noncompliance again (specific deterrence) and dissuade others from violating the law (general deterrence). Successful deterrence is important because it provides the best protection for the environment. In addition, it reduces the resources necessary to administer the laws by addressing noncompliance before it occurs.

If a penalty is to achieve deterrence, both the violator and the general public must be convinced that the penalty places the violator in a worse position than those who have complied in a timely fashion. Neither the violator nor the general public is likely to believe this if the violator is able to retain an overall advantage from noncompliance. Moreover, allowing a violator to benefit from noncompliance punishes those who have complied by placing them at a competitive disadvantage. This creates a disincentive for compliance. For these reasons, it is Agency policy that penalties generally should, at a minimum, remove any significant economic benefits resulting from failure to comply with the law. This amount will be referred to as the "benefit component" of the penalty.

Where the penalty fails to remove the significant economic benefit, as defined by the program-specific guidance, the case development team must explain in the case file why it fails to do so. The case development team must then include this explanation in the memorandum accompanying each settlement for the signature of the Assistant Administrator of Enforcement and Compliance Monitoring, or the appropriate Regional official.

The removal of the economic benefit of noncompliance only places the violator in the same position as he would have been if compliance had been achieved on time. Both deterrence and fundamental fairness require that the penalty include an additional amount to ensure that the violator is economically worse off than if it had obeyed the law. This additional amount should reflect the seriousness of the violation. In doing so, the penalty will be perceived as fair. In addition the penalty's size will tend to deter other potential violators.

In some classes of cases, the normal gravity calculation may be insufficient to effect general deterrence. This could happen if, for example, there was extensive noncompliance with certain regulatory programs in specific areas of the United States. This would demonstrate that the normal penalty assessments had not been achieving general deterrence. In such cases, the case development team should consider increasing the gravity component sufficient to

achieve general deterrence. These extra assessments should balance the other goals of this policy, particularly equitable treatment of the regulated community.

This approach is consistent with the civil penalty provisions in the environmental laws. Almost all of them require consideration of the seriousness of the violation. This additional amount which reflects the seriousness of the violation is referred to as the "gravity component". The combination of the benefit and gravity components yields the "preliminary deterrence figure."

As explained later in this policy, the case development team will adjust this figure as appropriate. Nevertheless, EPA typically should seek to recover, at a minimum, a penalty which includes the benefit component plus some non-trivial gravity component. This is important because otherwise, regulated parties would have a general economic incentive to delay compliance until the Agency commenced an enforcement action. Once the Agency brought the action, the violator could then settle for a penalty less than their economic benefit of noncompliance. This incentive would directly undermine the goal of deterrence.

Fair and Equitable Treatment of the Regulated Community

The second goal of penalty assessment is the fair and equitable treatment of the regulated community. Fair and equitable treatment requires that the Agency's penalties must display both consistency and flexibility. The consistent application of a penalty policy is important because otherwise the resulting penalties might be seen as being arbitrarily assessed. Thus violators would be more inclined to litigate over those penalties. This would consume Agency resources and make swift resolution of environmental problems less likely.

But any system for calculating penalties must have enough flexibility to make adjustments to reflect legitimate differences between similar violations. Otherwise the policy might be viewed as unfair. Again, the result would be to undermine the goals of the Agency to achieve swift and equitable resolutions of environmental problems.

Methods for quantifying the benefit and gravity components are explained in the Framework guidance. These methods significantly further the goal of equitable treatment of violators. To begin with, the benefit component promotes equity by removing the unfair economic advantage which a violator may have gained over complying parties. Furthermore, because the benefit and gravity components are generated systematically, they

will exhibit relative consistency from case to case. Because the methodologies account for a wide range of relevant factors, the penalties generated will be responsive to legitimate differences between cases.

However, not all the possibly relevant differences between cases are accounted for in generating the preliminary deterrence amount. Accordingly, all preliminary deterrence amounts should be increased or mitigated for the following factors to account for differences between cases:

- Degree of willfulness and/or negligence
- History of noncompliance.
- Ability to pay.
- Degree of cooperation/noncooperation.
- Other unique factors specific to the violator or the case.

Mitigation based on these factors is appropriate to the extent the violator clearly demonstrates that it is entitled to mitigation.

The preliminary deterrence amount adjusted prior to the start of settlement negotiations yields the "initial penalty target figure". In administrative actions, this figure generally is the penalty assessed in the complaint. In judicial actions, EPA will use this figure as the first settlement goal. This settlement goal is an internal target and should not be revealed to the violator unless the case development team feels that it is appropriate. The initial penalty target may be further adjusted as negotiations proceed and additional information becomes available or as the original information is reassessed.

Swift Resolution of Environmental Problems

The third goal of penalty assessment is swift resolution of environmental problems. The Agency's primary mission is to protect the environment. As long as an environmental violation continues, precious natural resources, and possibly public health, are at risk. For this reason, swift correction of identified environmental problems must be an important goal of any enforcement action. In addition, swift compliance conserves Agency personnel and resources.

The Agency will pursue two basic approaches to promoting quick settlements which include swift resolution of environmental problems without undermining deterrence. Those two approaches are as follows:

1. Provide incentives to settle and institute prompt remedial action.

EPA policy will be to provide specific incentives to settle, including the following:

- The Agency will consider reducing the gravity component of the penalty for settlements in which the violator already has instituted expeditious remedies to the identified violations prior to the commencement of litigation.1/ This would be considered in the adjustment factor called degree of cooperation/noncooperation discussed above.

- The Agency will consider accepting additional environmental cleanup, and mitigating the penalty figures accordingly. But normally, the Agency will only accept this arrangement if agreed to in pre-litigation settlement.

Other incentives can be used, as long as they do not result in allowing the violator to retain a significant economic benefit.

2. Provide disincentives to delaying compliance.

The preliminary deterrence amount is based in part upon the expected duration of the violation. If that projected period of time is extended during the course of settlement negotiations due to the defendant's actions, the case development team should adjust that figure upward. The case development team should consider making this fact known to the violator early in the negotiation process. This will provide a strong disincentive to delay compliance.

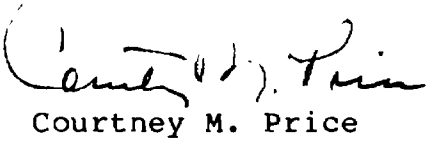
1/ For the purposes of this document, litigation is deemed to begin:

- for administrative actions - when the respondent files a response to an administrative complaint or when the time to file expires or

- for judicial actions - when an Assistant United States Attorney files a complaint in court.

Intent of Policy and Information Requests for Penalty Calculations

The policies and procedures set out in this document and in the Framework for Statute-Specific Approaches to Penalty Assessment are intended solely for the guidance of government personnel. They are not intended and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the United States. The Agency reserves the right to act at variance with these policies and procedures and to change them at any time without public notice. In addition, any penalty calculations under this policy made in anticipation of litigation are exempt from disclosure under the Freedom of Information Act. Nevertheless as a matter of public interest, the Agency may elect to release this information in some cases.



Courtney M. Price
Assistant Administrator for
Enforcement and Compliance Monitoring

Attachment

ATTACHMENT A

Outline of Civil Penalty Assessment

I. Calculate Preliminary Deterrence Amount

A. Economic benefit component and

B. Gravity component

(This yields the preliminary deterrence amount.)

II. Apply Adjustment Factors

A. Degree of cooperation/noncooperation (indicated through pre-settlement action.)

B. Degree of willfulness and/or negligence.

C. History of noncompliance.

D. Ability to pay (optional at this stage.)

E. Other unique factors (including strength of case, competing public policy concerns.)

(This yields the initial penalty target figure.)

III. Adjustments to Initial Penalty Target Figure After Negotiations Have Begun

A. Ability to pay (to the extent not considered in calculating initial penalty target.)

B. Reassess adjustments used in calculating initial penalty target. (Agency may want to reexamine evidence used as a basis for the penalty in the light of new information.)

C. Reassess preliminary deterrence amount to reflect continued periods of noncompliance not reflected in the original calculation.

D. Alternative payments agreed upon prior to the commencement of litigation.

(This yields the adjusted penalty target figure.)

A FRAMEWORK FOR STATUTE-SPECIFIC APPROACHES TO PENALTY ASSESSMENTS: IMPLEMENTING EPA'S POLICY ON CIVIL PENALTIES

EPA GENERAL ENFORCEMENT POLICY #GM - 22

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

EFFECTIVE DATE: FEB 16 1984

Contents Page

Appendix (Con't)

Introduction

This document, A Framework for Statute-Specific Approaches to Penalty Assessment, provides guidance to the user of the Policy on Civil Penalties on how to develop a medium-specific penalty policy. Such policies will apply to administratively imposed penalties and settlements of both administrative and judicial penalty actions.

In the Policy on Civil Penalties, the Environmental Protection Agency establishes a single set of goals for penalty assessment. Those goals - deterrence, fair and equitable treatment of the regulated community, and swift resolution of environmental problems - will be substantially impaired unless they are pursued in a consistent fashion. Even different terminology could cause confusion that would detract from the achievement of these goals. At the same time, too much rigidity will stifle negotiation and make settlement impossible.

The purpose of this document is to promote the goals of the Policy on Civil Penalties by providing a framework for medium-specific penalty policies. The Framework is detailed enough to allow individual programs to develop policies that will consistently further the Agency's goals and be easy to administer. In addition, it is general enough to allow each program to tailor the policy to the relevant statutory provisions and the particular priorities of each program.

While this document contains detailed guidance, it is not cast in absolute terms. Nevertheless, the policy does not encourage deviation from this guidance in either the development of medium-specific policies or in developing actual penalty figures. Where there are deviations in developing medium-specific policies, the reasons for those changes must be recorded in the actual policy. Where there are deviations from medium-specific policies in calculating a penalty figure, the case development team must detail the reasons for those changes in the case file. In addition, the rationale behind the deviations must be incorporated in the memorandum accompanying the settlement package to Headquarters or the appropriate Regional official.

This document is divided into two sections. The first one gives brief instructions to the user on how to write a medium-specific policy. The second section is an appendix that gives detailed guidance on implementing each section of the instructions and explains how the instructions are intended to further the goals of the policy.

Writing a Program Specific Policy

Summarized below are those elements that should be present in a program-specific penalty policy. For a detailed discussion of each of these ideas, the corresponding portions of the appendix should be consulted.

I. Developing a Penalty Figure

The development of a penalty figure is a two step process. First the case development team must calculate a preliminary deterrence figure. This figure is composed of the economic benefit component (where applicable) and the gravity component. The second step is to adjust the preliminary deterrence figure through a number of factors. The resulting penalty figure is the initial penalty target figure. In judicial actions, the initial penalty target figure is the penalty amount which the government normally sets as a goal at the outset of settlement negotiations. It is essentially an internal settlement goal and should not be revealed to the violator unless the case development team feels it is appropriate. In administrative actions, this figure generally is the penalty assessed in the complaint. While in judicial actions, the government's complaint will request the maximum penalty authorized by law.

This initial penalty target figure may be further adjusted in the course of negotiations. Each policy should ensure that the penalty assessed or requested is within any applicable statutory constraints, based upon the number and duration of violations at issue.

II. Calculating a Preliminary Deterrence Amount

Each program-specific policy must contain a section on calculating the preliminary deterrence figure. That section should contain materials on each of the following areas:

- Benefit Component. This section should explain:
  - a. the relevent measure of economic benefit for various types of violations,
  - b. the information needed,
  - c. where to get assistance in computing this figure and
  - d. how to use available computer systems to compare a case with similar previous violations.

- Gravity Component. This section should first rank different types of violations according to the seriousness of the act. In creating that ranking, the following factors should be considered:

  a. actual or possible harm,
  b. importance to the regulatory scheme and
  c. availability of data from other sources.

In evaluating actual or possible harm, your scheme should consider the following facts:

- amount of pollutant,
- toxicity of pollutant,
- sensitivity of the environment,
- length of time of a violation and
- size of the violator.

The policy then should assign appropriate dollar amounts or ranges of amounts to the different ranked violations to constitute the "gravity component". This amount, added to the amount reflecting economic benefit, constitutes the preliminary deterrence figure.

III. Adjusting the Preliminary Deterrence Amount to Derive the Initial Penalty Target Figure (Prenegotiation Adjustment)

Each program-specific penalty policy should give detailed guidance on applying the appropriate adjustments to the preliminary deterrence figure. This is to ensure that penalties also further Agency goals besides deterrence (i.e. equity and swift correction of environmental problems). Those guidelines should be consistent with the approach described in the appendix. The factors may be separated according to whether they can be considered before or after negotiation has begun or both.

Adjustments (increases or decreases, as appropriate) that can be made to the preliminary deterrence penalty to develop an initial penaly target to use at the outset of negotiation include:

- Degree of willfulness and/or negligence
- Cooperation/noncooperation through pre-settlement action.
- History of noncompliance.

- Ability to pay.
- Other unique factors (including strength of case, competing public policy considerations).

The policy may permit consideration of the violator's ability to pay as an adjustment factor before negotiations begin. It may also postpone consideration of that factor until after negotiations have begun. This would allow the violator to produce evidence substantiating its inability to pay.

The policy should prescribe appropriate amounts, or ranges of amounts, by which the preliminary deterrence penalty should be adjusted. Adjustments will depend on the extent to which certain factors are pertinent. In order to preserve the penalty's deterrent effect, the policy should also ensure that, except for the specific exceptions described in this document, the adjusted penalty will: 1) always remove any significant economic benefit of noncompliance and 2) contain some non-trivial amount as a gravity component.

IV. Adjusting the Initial Penalty Target During Negotiations

Each program-specific policy should call for periodic reassessment of these adjustments during the course of negotiations. This would occur as additional relevant information becomes available and the old evidence is re-evaluated in the light of new evidence. Once negotiations have begun, the policy also should permit adjustment of the penalty target to reflect "alternative payments" the violator agrees to make in settlement of the case. Adjustments for alternative payments and pre-settlement corrective action are generally permissible only before litigation has begun.

Again, the policy should be structured to ensure that any settlement made after negotiations have begun reflects the economic benefit of noncompliance up to the date of compliance plus some non-trivial gravity component. This means that if lengthy settlement negotiations cause the violation to continue longer than initially anticipated, the penalty target figure should be increased. The increase would be based upon the extent that the violations continue to produce ongoing environmental risk and increasing economic benefit.

Use of the Policy In Litigation

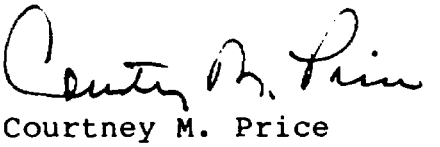
Each program-specific policy should contain a section on the use of the policy in litigation. Requests for penalties

should account for all the factors identified in the relevant statute and still allow for compromises in settlement without exceeding the parameters outlined in this document. (For each program, all the statutory factors are contained in the Framework either explicitly or as part of broader factors.) For administrative proceedings, the policy should explain how to formulate a penalty figure, consistent with the policy. The case development team will put this figure in the administrative complaint.

In judicial actions, the EPA will use the initial penalty target figure as its first settlement goal. This settlement goal is an internal target and should not be revealed to the violator unless the case development team feels it is appropriate. In judicial litigation, the government should request the maximum penalty authorized by law in its complaint. The policy should also explain how it and any applicable precedents should be used in responding to any explicit requests from a court for a minimum assesment which the Agency would deem appropriate.

Use of the Policy as a Feedback Device

Each program-specific policy should first explain in detail what information needs to be put into the case file and into the relevant computer tracking system. Furthermore, each policy should cover how to use that system to examine penalty assessments in other cases. This would thereby assist the Agency in making judgments about the size of adjustments to the penalty for the case at hand. Each policy should also explain how to present penalty calculations in litigation reports.



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Attachment

APPENDIX

Introduction

This appendix contains three sections. The first two sections set out guidelines for achieving the goals of the Policy on Civil Penalties. The first section focuses on achieving deterrence by assuring that the penalty first removes any economic benefit from noncompliance. Then it adds an amount to the penalty which reflects the seriousness of the violation. The second section provides adjustment factors so that both a fair and equitable penalty will result and that there will be a swift resolution of the environmental problem. The third section of the framework presents some practical advice on the use of the penalty figures generated by the policy.

The Preliminary Deterrence Amount

The Policy on Civil Penalties establishes deterrence as an important goal of penalty assessment. More specifically, it specifies that any penalty should, at a minimum, remove any significant benefits resulting from noncompliance. In addition, it should include an amount beyond removal of economic benefit to reflect the seriousness of the violation. That portion of the penalty which removes the economic benefit of noncompliance is referred to as the "benefit component;" that part of the penalty which reflects the seriousness of the violation is referred to as the "gravity component." When combined, these two components yield the "preliminary deterrence amount."

This section of the document provides guidelines for calculating the benefit component and the gravity component. It will also present and discuss a simplified version of the economic benefit calculation for use in developing quick penalty determinations. This section will also discuss the limited circumstances which justify settling for less than the benefit component. The uses of the preliminary deterrence amount will be explained in subsequent portions of this document.

I. The Benefit Component

In order to ensure that penalties remove any significant economic benefit of noncompliance, it is necessary to have reliable methods to calculate that benefit. The existence of reliable methods also strengthens the Agency's position in both litigation and negotiation. This section sets out guidelines for computing the benefit component. It first addresses costs which are delayed by noncompliance. Then it addresses costs which are avoided completely by noncompliance. It also identifies issues

to be considered when computing the benefit component for those violations where the benefit of noncompliance results from factors other than cost savings. This section concludes with a discussion of the proper use of the benefit component in developing penalty figures and in settlement negotiations.

A. Benefit from delayed costs

In many instances, the economic advantage to be derived from noncompliance is the ability to delay making the expenditures necessary to achieve compliance. For example, a facility which fails to construct required settling ponds will eventually have to spend the money needed to build those ponds in order to achieve compliance. But, by deferring these one-time nonrecurring costs until EPA or a State takes an enforcement action, that facility has achieved an economic benefit. Among the types of violations which result in savings from deferred cost are the following:

- Failure to install equipment needed to meet discharge or emission control standards.
- Failure to effect process changes needed to eliminate pollutants from products or waste streams.
- Testing violations, where the testing still must be done to demonstrate achieved compliance.
- Improper disposal, where proper disposal is still required to achieve compliance.
- Improper storage where proper storage is still required to achieve compliance.
- Failure to obtain necessary permits for discharge, where such permits would probably be granted. (While the avoided cost for many programs would be negligible, there are programs where the the permit process can be expensive).

The Agency has a substantial amount of experience under the air and water programs in calculating the economic benefit that results from delaying costs necessary to achieve compliance. This experience indicates that it is possible to estimate the benefit of delayed compliance through the use of a simple formula. Specifically, the economic benefit of delayed compliance may be estimated at: 5% per year of the delayed one-time capital cost for the period from the date the violation began until the date

compliance was or is expected to be achieved. This will be referred to as the "rule of thumb for delayed compliance" method. Each program may adopt its own "rule of thumb" if appropriate. The applicable medium-specific guidance should state what that method is.

The rule of thumb method can usually be used in making decisions on whether to develop a case or in setting a penalty target for settlement negotiations. In using this rule of thumb method in settlement negotiations, the Agency may want to make the violator fully aware that it is using an estimate and not a more precise penalty determination procedure. The decision whether to reveal this information is up to the negotiators.

The "rule of thumb" method only provides a first-cut estimate of the benefit of delayed compliance. For this reason, its use is probably inappropriate in situations where a detailed analysis of the economic effect of noncompliance is needed to support or defend the Agency's position. Accordingly, this "rule of thumb" method generally should not be used in any of the following circumstances:

- A hearing is likely on the amount of the penalty.
- The defendant wishes to negotiate over the amount of the economic benefit on the basis of factors unique to the financial condition of the company.
- The case development team has reason to believe it will produce a substantially inaccurate estimate; for example, where the defendant is in a highly unusual financial position, or where noncompliance has or will continue for an unusually long period.

There usually are avoided costs associated with this type of situation. Therefore, the "rule of thumb for avoided costs" should also be applied. (See pages 9-10). For most cases, both figures are needed to yield the major portion of the economic benefit component.

When the rule of thumb method is not applicable, the economic benefit of delayed compliance should be computed using the Methodology for Computing the Economic Benefit of Noncompliance. This document, which is under development, provides a method for computing the economic benefit of noncompliance based on a detailed economic analysis. The method will largely be a refined version of the method used in the previous Civil Penalty Policy issued July 8, 1980, for the Clean Water Act and Title I of the Clean Air Act. It will also be consistent with the regulations

implementing Section 120 of the Clean Air Act. A computer program will be available to the Regions to perform the analysis, together with instructions for its use. Until the Methodology is issued, the economic model contained in the July 8, 1980, Civil Penalty Policy should be used. It should be noted that the Agency recently modified this guidance to reflect changes in the tax law.

B. Benefit from avoided costs

Many kinds of violations enable a violator to permanently avoid certain costs associated with compliance.

- Cost savings for operation and maintenance of equipment that the violator failed to install.
- Failure to properly operate and maintain existing control equipment.
- Failure to employ sufficient number of adequately trained staff.
- Failure to establish or follow precautionary methods required by regulations or permits.
- Improper storage, where commercial storage is reasonably available.
- Improper disposal, where redisposal or cleanup is not possible.
- Process, operational, or maintenance savings from removing pollution equipment.
- Failure to conduct necessary testing.

As with the benefit from delayed costs, the benefit component for avoided costs may be estimated by another "rule of thumb" method. Since these costs will never be incurred, the estimate is the expenses avoided until the date compliance is achieved less any tax savings. The use of this "rule of thumb" method is subject to the same limitations as those discussed in the preceding section.

Where the "rule of thumb for avoided costs" method cannot be used, the benefit from avoided costs must be computed using the Methodology for Computing the Economic Benefit of Noncompliance. Again, until the Metholology is issued, the method contained in the July 8, 1980, Civil Penalty Policy should be used as modified to reflect recent changes in the tax law.

C. Benefit from competitive advantage

For most violations, removing the savings which accrue from noncompliance will usually be sufficient to remove the competitive advantage the violator clearly has gained from noncompliance. But there are some situations in which noncompliance allows the violator to provide goods or services which are not available elsewhere or are more attractive to the consumer. Examples of such violations include:

- Selling banned products.
- Selling products for banned uses.
- Selling products without required labelling or warnings.
- Removing or altering pollution control equipment for a fee, (e.g., tampering with automobile emission controls.)
- Selling products without required regulatory clearance, (e.g., pesticide registration or premanufacture notice under TSCA.)

To adequately remove the economic incentive for such violations, it is helpful to estimate the net profits made from the improper transactions (i.e. those transactions which would not have occurred if the party had complied). The case development team is responsible for identifying violations in which this element of economic benefit clearly is present and significant. This calculation may be substantially different depending on the type of violation. Consequently the program-specific policies should contain guidance on identifying these types of violations and estimating these profits. In formulating that guidance, the following principles should be followed:

- The amount of the profit should be based on the best information available concerning the number of transactions resulting from noncompliance.
- Where available, information about the average profit per transaction may be used. In some cases, this may be available from the rulemaking record of the provision violated.
- The benefit derived should be adjusted to reflect the present value of net profits derived in the past.

It is recognized that the methods developed for estimating the profit from those transactions will sometimes rely substantially on expertise rather than verifiable data. Nevertheless, the programs should make all reasonable efforts to ensure that the estimates developed are defensible. The programs are encouraged to work with the Office of Policy, Planning and Evaluation to ensure that the methods developed are consistent with the forthcoming Methodology for Computing the Economic Benefit of Noncompliance and with methods developed by other programs. The programs should also ensure that sufficient contract funds are available to obtain expert advice in this area as needed to support penalty development, negotiation and trial of these kinds of cases.

D. Settling cases for an amount less than the economic benefit

As noted above, settling for an amount which does not remove the economic benefit of noncompliance can encourage people to wait until EPA or the State begins an enforcement action before complying. For this reason, it is general Agency policy not to settle for less than this amount. There are three general areas where settling for less than economic benefit may be appropriate. But in any individual case where the Agency decides to settle for less than enconomic benefit, the case development team must detail those reasons in the case file and in any memoranda accompanying the settlement.

1. Benefit component involves insignificant amount

It is clear that assessing the benefit component and negotiating over it will often represent a substantial commitment of resources. Such a commitment of resources may not be warranted in cases where the magnitude of the benefit component is not likely to be significant, (e.g. not likely to have a substantial impact on the violator's competitive positions). For this reason, the case development team has the discretion not to seek the benefit component where it appears that the amount of that component is likely to be less than $10,000. (A program may determine that other cut-off points are more reasonable based on the likelihood that retaining the benefit could encourage noncomplying behavior.) In exercising that discretion, the case development team should consider the following factors:

- Impact on violator: The likelihood that assessing the benefit component as part of the penalty will have a noticeable effect on the violator's competitive position or overall profits. If no such effect appears likely, the benefit component should probably not be pursued.

- The size of the gravity component: If the gravity component is relatively small, it may not provide a sufficient deterrent, by

itself, to achieve the goals of this policy.

- The certainty of the size of the benefit component: If the economic benefit is quite well defined, it is not likely to require as much effort to seek to include it in the penalty assessment. Such circumstances also increase the likelihood that the economic benefit was a substantial motivation for the noncompliance. This would make the inclusion of the benefit component more necessary to achieve specific deterrence.

It may be appropriate not to seek the benefit component in an entire class of violation. In that situation, the rationale behind that approach should be clearly stated in the appropriate medium-specific policy. For example, the most appropriate way to handle a small non-recurring operation and maintenance violation may be a small penalty. Obviously it makes little sense to assess in detail the economic benefit for each individual violation because the benefit is likely to be so small. The medium-specific policy would state this as the rationale.

2. Compelling public concerns

The Agency recognizes that there may be some instances where there are compelling public concerns that would not be served by taking a case to trial. In such instances, it may become necessary to consider settling a case for less than the benefit component. This may be done only if it is absolutely necessary to preserve the countervailing public interests. Such settlements might be appropriate where the following circumstances occur:

- There is a very substantial risk of creating precedent which will have a significant adverse effect upon the Agency's ability to enforce the law or clean up pollution if the case is taken to trial.

- Settlement will avoid or terminate an imminent risk to human health or the environment. This is an adequate justification only if injunctive relief is unavailable for some reason, and if settlement on remedial responsibilities could not be reached independent of any settlement of civil penalty liability.

- Removal of the economic benefit would result in plant closings, bankruptcy, or other extreme financial burden, and there is an important public interest in allowing the firm to continue in business.

Alternative payment plans should be fully explored before resorting to this option. Otherwise, the Agency will give the perception that shirking one's environmental responsibilities is a way to keep a failing enterprise afloat. This exemption does not apply to situations where the plant was likely to close anyway, or where there is a likelihood of continued harmful noncompliance.

3. Litigation practicalities

The Agency realizes that in certain cases, it is highly unlikely the EPA will be able to recover the economic benefit in litigation. This may be due to applicable precedent, competing public interest considerations, or the specific facts, equities, or evidentiary issues pertaining to a particular case. In such a situation it is unrealistic to expect EPA to obtain a penalty in litigation which would remove the economic benefit. The case development team then may pursue a lower penalty amount.

II. The Gravity Component

As noted above, the Policy on Civil Penalties specifies that a penalty, to achieve deterrence, should not only remove any economic benefit of noncompliance, but also include an amount reflecting the seriousness of the violation. This latter amount is referred to as the "gravity component." The purpose of this section of the document is to establish an approach to quantifying the gravity component. This approach can encompass the differences between programs and still provide the basis for a sound consistent treatment of this issue.

A. Quantifying the gravity of a violation

Assigning a dollar figure to represent the gravity of a violation is an essentially subjective process. Nevertheless, the relative seriousness of different violations can be fairly accurately determined in most cases. This can be accomplished by reference to the goals of the specific regulatory scheme and the facts of each particular violation. Thus, linking the dollar amount of the gravity component to these objective factors is a useful way of insuring that violations of approximately equal seriousness are treated the same way.

Such a linkage promotes consistency. This consistency strengthens the Agency's position both in negotiation and before a trier of fact. This approach consequently also encourages swift resolution of environmental problems.

Each program must develop a system for quantifying the gravity of violations of the laws and regulations it administers.

This development must occur within the context of the penalty amounts authorized by law for that program. That system must be based, whenever possible, on objective indicators of the seriousness of the violation. Examples of such indicators are given below. The seriousness of the violation should be based primarily on: 1) the risk of harm inherent in the violation at the time it was committed and 2) the actual harm that resulted from the violation. In some cases, the seriousness of the risk of harm will exceed that of the actual harm. Thus, each system should provide enough flexibility to allow EPA to consider both factors in assessing penalties.

Each system must also be designed to minimize the possibility that two persons applying the system to the same set of facts would come up with substantially different numbers. Thus, to the extent the system depends on categorizing events, those categories must be clearly defined. That way there is little possibility for argument over the category in which a violation belongs. In addition, the categorization of the events relevant to the penalty decision should be noted in the penalty development portion of the case file.

B. Gravity Factors

In quantifying the gravity of a violation, a program-specific policy should rank different types of violations according to the seriousness of the act. The following is a suggested approach to ranking the seriousness of violations. In this approach to ranking, the following factors should be considered:

- Actual or possible harm: This factor focuses on whether (and to what extent) the activity of the defendant actually resulted or was likely to result in an unpermitted discharge or exposure.

- Importance to the regulatory scheme: This factor focuses on the importance of the requirement to achieving the goal of the statute or regulation. For example, if labelling is the only method used to prevent dangerous exposure to a chemical, then failure to label should result in a relatively high penalty. By contrast, a warning sign that was visibly posted but was smaller than the required size would not normally be considered as serious.

- Availability of data from other sources: The violation of any recordkeeping or reporting requirement is a very serious

matter. But if the involved requirement is the only source of information, the violation is far more serious. By contrast, if the Agency has another readily available and cheap source for the necessary information, a smaller penalty may be appropriate. (E.g. a customer of the violator purchased all the violator's illegally produced substance. Even though the violator does not have the required records, the customer does.)

- Size of violator: In some cases, the gravity component should be increased where it is clear that the resultant penalty will otherwise have little impact on the violator in light of the risk of harm posed by the violation. This factor is only relevant to the extent it is not taken into account by other factors.

The assessment of the first gravity factor listed above, risk or harm arising from a violation, is a complex matter. For purposes of ranking violations according to seriousness, it is possible to distinguish violations within a category on the basis of certain considerations, including the following:

- Amount of pollutant: Adjustments for the concentration of the pollutant may be appropriate, depending on the regulatory scheme and the characteristics of the pollutant. Such adjustments need not be linear, especially if the pollutant can be harmful at low concentrations.

- Toxicity of the pollutant: Violations involving highly toxic pollutants are more serious and should result in relatively larger penalties.

- Sensitivity of the environment: This factor focuses on the location where the violation was committed. For example, improper discharge into waters near a drinking water intake or a recreational beach is usually more serious than discharge into waters not near any such use.

- The length of time a violation continues: In most circumstances, the longer a violation continues uncorrected, the greater is the risk of harm.

Although each program-specific policy should address each of the factors listed above, or determine why it is not relevant, the factors listed above are not meant to be exhaustive. The programs should make every effort to identify all factors relevant to assessing the seriousness of any violation. The programs should then systematically prescribe a dollar amount to yield a gravity component for the penalty. The program-specific policies may prescribe a dollar range for a certain category of violation rather than a precise dollar amount within that range based on the specific facts of an individual case.

The process by which the gravity component was computed must be memorialized in the case file. Combining the benefit component with the gravity component yields the preliminary deterrence amount.

In some classes of cases, the normal gravity calculation may be insufficient to effect general deterrence. This could happen if there was extensive noncompliance with certain regulatory programs in specific areas of the United States. This would demonstrate that the normal penalty assessments had not been achieving general deterrence. The medium specific policies should address this issue. One possible approach would be to direct the case development team to consider increasing the gravity component within a certain range to achieve general deterrence. These extra assessments should be consistent with the other goals of this policy.

Initial and Adjusted Penalty Target Figure

The second goal of the Policy on Civil Penalties is the equitable treatment of the regulated community. One important mechanism for promoting equitable treatment is to include the benefit component discussed above in a civil penalty assessment. This approach would prevent violators from benefitting economically from their noncompliance relative to parties which have complied with environmental requirements.

In addition, in order to promote equity, the system for penalty assessment must have enough flexibility to account for the unique facts of each case. Yet it still must produce enough consistent results to treat similarly-situated violators similarly. This is accomplished by identifying many of the legitimate differences between cases and providing guidelines for how to adjust the preliminary deterrence amount when those facts occur. The application of these adjustments to the preliminary deterrence amount prior to the commencement of negotiation yields the initial penalty target figure. During the course of negotiation, the case development team may further adjust this figure to yield the adjusted penalty target figure.

Nevertheless, it should be noted that equitable treatment is a two-edged sword. While it means that a particular violator will receive no higher penalty than a similarly situated violator, it also means that the penalty will be no lower.

I. Flexibility-Adjustment Factors

The purpose of this section of the document is to establish additional adjustment factors to promote flexibility and to identify management techniques that will promote consistency. This section sets out guidelines for adjusting penalties to account for some factors that frequently distinguish different cases. Those factors are: degree of willfulness and/or negligence, degree of cooperation/noncooperation, history of noncompliance, ability to pay, and other unique factors. Unless otherwise specified, these adjustment factors will apply only to the gravity component and not to the economic benefit component. Violators bear the burden of justifying mitigation adjustments they propose based on these factors.

Within each factor there are three suggested ranges of adjustment. The actual ranges for each medium-specific policy will be determined by those developing the policy. The actual ranges may differ from these suggested ranges based upon program specific needs. The first, typically a 0-20% adjustment of the gravity component, is within the absolute discretion of the case development team. 1/ The second, typically a 21-30% adjustment, is only appropriate in unusual circumstances. The third range, typically beyond 30% adjustment, is only appropriate in extraordinary circumstances. Adjustments in the latter two ranges, unusual and extraordinary circumstances, will be subject to scrutiny in any performance audit. The case development team may wish to reevaluate these adjustment factors as the negotiations progress. This allows the team to reconsider evidence used as a basis for the penalty in light of new information.

Where the Region develops the penalty figure, the application of adjustment factors will be part of the planned Regional audits. Headquarters will be responsible for proper application of these factors in nationally-managed cases. A detailed discussion of these factors follows.

A. Degree of Willfulness and/or Negligence

Although most of the statutes which EPA administers are strict liability statutes, this does not render the violator's

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1/ Absolute discretion means that the case development team may make penalty development decisions independent of EPA Headquarters. Nevertheless it is understood that in all judicial matters, the Department of Justice can still review these determinations if they so desire. Of course the authority to exercise the Agency's concurrence in final settlements is covered by the applicable delegations.

willfulness and/or negligence irrelevant. Knowing or willful violations can give rise to criminal liability, and the lack of any culpability may, depending upon the particular program, indicate that no penalty action is appropriate. Between these two extremes, the willfulness and/or negligence of the violator should be reflected in the amount of the penalty.

In assessing the degree of willfulness and/or negligence, all of the following points should be considered in most cases:

- How much control the violator had over the events constituting the violation.
- The forseeability of the events constituting the violation.
- Whether the violator took reasonable precautions against the events constituting the violation.
- Whether the violator knew or should have known of the hazards associated with the conduct.
- The level of sophistication within the industry in dealing with compliance issues and/or the accessibility of appropriate control technology (if this information is readily available). This should be balanced against the technology forcing nature of the statute, where applicable.
- Whether the violator in fact knew of the legal requirement which was violated.

It should be noted that this last point, lack of knowledge of the legal requirement, should never be used as a basis to reduce the penalty. To do so would encourage ignorance of the law. Rather, knowledge of the law should serve only to enhance the penalty.

The amount of control which the violator had over how quickly the violation was remedied is also relevent in certain circumstances. Specifically, if correction of the environmental problem was delayed by factors which the violator can clearly show were not reasonably foreseeable and out of its control, the penalty may be reduced.

The suggested approach for this factor is for the case development team to have absolute discretion to adjust the penalty up or down by 20% of the gravity component. Adjustments in the $\pm$ 21-30% range should only be made in unusual circumstances.

Adjustments for this factor beyond ± 30% should be made only in extraordinary circumstances. Adjustments in the unusual or extraordinary circumstance range will be subject to scrutiny in any audit of performance.

B. Degree of Cooperation/Noncooperation

The degree of cooperation or noncooperation of the violator in remedying the violation is an appropriate factor to consider in adjusting the penalty. Such adjustments are mandated by both the goals of equitable treatment and swift resolution of environmental problems. There are three areas where this factor is relevant.

1. Prompt reporting of noncompliance

Cooperation can be manifested by the violator promptly reporting its noncompliance. Assuming such self-reporting is not required by law, such behavior should result in the mitigation of any penalty.

The suggested ranges of adjustment are as follows. The case development team has absolute discretion on any adjustments up to ± 10% of the gravity component for cooperation/noncooperation. Adjustments can be made up to ± 20% of the gravity component, but only in unusual circumstances. In extraordinary circumstances, such as self reporting of a TSCA premanufacture notice violation, the case development team may adjust the penalty beyond the ± 20% factor. Adjustments in the unusual or extraordinary circumstances ranges will be subject to scrutiny in any performance audit.

2. Prompt correction of environmental problems

The Agency should provide incentives for the violator to commit to correcting the problem promptly. This correction must take place before litigation is begun, except in extraordinary circumstances.2/ But since these incentives must be consistent with deterrence, they must be used judiciously.

2/ For the purposes of this document, litigation is deemed to begin:

- for administrative actions - when the respondent files a response to an administrative complaint or when the time to file expires or
- for judicial actions - when an Assistant United States Attorney files a complaint in court.

The circumstances under which the penalty is reduced depend on the type of violation involved and the source's response to the problem. A straightforward reduction in the amount of the gravity component of the penalty is most appropriate in those cases where either: 1) the environmental problem is actually corrected prior to initiating litigation, or 2) ideally, immediately upon discovery of the violation. Under this approach, the reduction typically should be a substantial portion of the unadjusted gravity component.

In general, the earlier the violator instituted corrective action after discovery of the violation and the more complete the corrective action instituted, the larger the penalty reduction EPA will consider. At the discretion of the case development team, the unadjusted gravity component may be reduced up to 50%. This would depend on how long the environmental problem continued before correction and the amount of any environmental damage. Adjustments greater than 50% are permitted, but will be the subject of close scrutiny in auditing performance.

It should be noted that in some instances, the violator will take all necessary steps toward correcting the problem but may refuse to reach any agreement on penalties. Similarly, a violator may take some steps to ameliorate the problem, but choose to litigate over what constitutes compliance. In such cases, the gravity component of the penalty may be reduced up to 25% at the discretion of the case development team. This smaller adjustment still recognizes the efforts made to correct the environmental problem, but the benefit to the source is not as great as if a complete settlement is reached. Adjustments greater than 25% are permitted, but will be the subject of close scrutiny in auditing performance.

In all instances, the facts and rationale justifying the penalty reduction must be recorded in the case file and included in any memoranda accompanying settlement.

3. Delaying compliance

Swift resolution of environmental problems will be encouraged if the violator clearly sees that it will be financially disadvantageous for the violator to litigate without remedying noncompliance. The settlement terms described in the preceding section are only available to parties who take steps to correct a problem prior to initiation of litigation. To some extent, this is an incentive to comply as soon as possible. Nevertheless, once litigation has commenced, it should be clear that the defendant litigates at its own risk.

In addition, the methods for computing the benefit component and the gravity component are both structured so that the penalty target increases the longer the violation remains uncorrected. The larger penalty for longer noncompliance is systematically linked to the benefits accruing to the violator and to the continuing risk to human health and the environment. This occurs even after litigation has commenced. This linkage will put the Agency in a strong position to convince the trier of fact to impose such larger penalties. For these reasons, the Policy on Civil Penalties provides substantial disincentives to litigating without complying.

C. History of noncompliance

Where a party has violated a similar environmental requirement before, this is usually clear evidence that the party was not deterred by the Agency's previous enforcement response. Unless the previous violation was caused by factors entirely out of the control of the violator, this is an indication that the penalty should be adjusted upwards.

In deciding how large these adjustments should be, the case development team should consider the following points:

- How similar the previous violation was.
- How recent the previous violation was.
- The number of previous violations.
- Violator's response to previous violation(s) in regard to correction of the previous problem.

Detailed criteria for what constitutes a "similar violation" should be contained in each program-specific policy. Nevertheless a violation should generally be considered "similar" if the Agency's previous enforcement response should have alerted the party to a particular type of compliance problem. Some facts that indicate a "similar violation" was committed are as follows:

- The same permit was violated.
- The same substance was involved.
- The same process points were the source of the violation.
- The same statutory or regulatory provision was violated.

° A similar act or omission (e.g. the failure to properly store chemicals) was the basis of the violation.

For purposes of this section, a "prior violation" includes any act or omission for which a formal enforcement response has occurred (e.g. notice of violation, warning letter, complaint, consent decree, consent agreement, or final order). It also includes any act or omission for which the violator has previously been given written notification, however informal, that the Agency believes a violation exists.

In the case of large corporations with many divisions or wholly-owned subsidiaries, it is sometimes difficult to determine whether a previous instance of noncompliance should trigger the adjustments described in this section. New ownership often raises similar problems. In making this determination, the case development team should ascertain who in the organization had control and oversight responsibility for the conduct resulting in the violation. In some situations the same persons or the same organizational unit had or reasonably should have had control or oversight responsibility for violative conduct. In those cases, the violation will be considered part of the compliance history of that regulated party.

In general, the case development team should begin with the assumption that if the same corporation was involved, the adjustments for history of noncompliance should apply. In addition, the case development team should be wary of a party changing operators or shifting responsibility for compliance to different groups as a way of avoiding increased penalties. The Agency may find a consistent pattern of noncompliance by many divisions or subsidiaries of a corporation even though the facilities are at different geographic locations. This often reflects, at best, a corporate-wide indifference to environmental protection. Consequently, the adjustment for history of noncompliance should probably apply unless the violator can demonstrate that the other violating corporate facilities are independent.

The following are the Framework's suggested adjustment ranges. If the pattern is one of "dissimilar" violations, relatively few in number, the case development team has absolute discretion to raise the penalty amount by 35%. For a relatively large number of dissimilar violations, the gravity component can be increased up to 70%. If the pattern is one of "similar" violations, the case development team has absolute discretion to raise the penalty amount up to 35% for the first repeat violation, and up to 70% for further repeated similar violations. The case development team may make higher adjustments in extraordinary circumstances, but such adjustments will be subject to scrutiny in any performance audit.

D. Ability to pay

The Agency will generally not request penalties that are clearly beyond the means of the violator. Therefore EPA should consider the ability to pay a penalty in arriving at a specific final penalty assessment. At the same time, it is important that the regulated community not see the violation of environmental requirements as a way of aiding a financially troubled business. EPA reserves the option, in appropriate circumstances, of seeking a penalty that might put a company out of business.

For example, it is unlikely that EPA would reduce a penalty where a facility refuses to correct a serious violation. The same could be said for a violator with a long history of previous violations. That long history would demonstrate that less severe measures are ineffective.

The financial ability adjustment will normally require a significant amount of financial information specific to the violator. If this information is available prior to commencement of negotiations, it should be assessed as part of the initial penalty target figure. If it is not available, the case development team should assess this factor after commencement of negotiation with the source.

The burden to demonstrate inability to pay, as with the burden of demonstrating the presence of any mitigating circumstances, rests on the defendant. If the violator fails to provide sufficient information, then the case development team should disregard this factor in adjusting the penalty. The National Enforcement Investigations Center (NEIC) has developed the capability to assist the Regions in determining a firm's ability to pay. Further information on this system will be made available shortly under separate cover.

When it is determined that a violator cannot afford the penalty prescribed by this policy, the following options should be considered:

- Consider a delayed payment schedule: Such a schedule might even be contingent upon an increase in sales or some other indicator of improved business. This approach is a real burden on the Agency and should only be considered on rare occasions.

- Consider non-monetary alternatives, such as public service activities: For example, in the mobile source program, fleet operators who tampered with pollution control devices

on their vehicles agreed to display anti-tampering ads on their vehicles. Similar solutions may be possible in other industries.

- Consider straight penalty reductions as a last recourse: If this approach is necessary, the reasons for the case development team's conclusion as to the size of the necessary reduction should be made a part of the formal enforcement file and the memorandum accompanying the settlement. 3/

- Consider joinder of the violator's individual owners: This is appropriate if joinder is legally possible and justified under the circumstances.

Regardless of the Agency's determination of an appropriate penalty amount to pursue based on ability to pay considerations, the violator is still expected to comply with the law.

E. Other unique factors

Individual programs may be able to predict other factors that can be expected to affect the appropriate penalty amount. Those factors should be identified and guidelines for their use set out in the program-specific policies. Nevertheless, each policy should allow for adjustment for unanticipated factors which might affect the penalty in each case.

It is suggested that there be absolute discretion to adjust penalties up or down by 10% of the gravity component for such reasons. Adjustments beyond the absolute discretion range will be subject to scrutiny during audits. In addition, they will primarily be allowed for compelling public policy concerns or the strengths and equities of the case. The rationale for the reduction must be expressed in writing in the case file and in any memoranda accompanying the settlement. See the discussion on pages 12 and 13 for further specifics on adjustments appropriate on the basis of either compelling public policy concerns or the strengths and equities of the case.

II. Alternative Payments

In the past, the Agency has accepted various environmentally beneficial expenditures in settlement of a case and chosen not to

3/ If a firm fails to pay the agreed-to penalty in an administrative or judicial final order, then the Agency must follow the Federal Claims Collection Act procedures for obtaining the penalty amount.

pursue more severe penalties. In general, the regulated community has been very receptive to this practice. In many cases, violators have found "alternative payments" to be more attractive than a traditional penalty. Many useful projects have been accomplished with such funds. But in some instances, EPA has accepted for credit certain expenditures whose actual environmental benefit has been somewhat speculative.

The Agency believes that these alternative payment projects should be reserved as an incentive to settlement before litigation. For this reason, such arrangements will be allowed only in prelitigation agreements except in extraordinary circumstances.

In addition, the acceptance of alternative payments for environmentally beneficial expenditures is subject to certain conditions. The Agency has designed these conditions to prevent the abuse of this procedure. Most of the conditions below applied in the past, but some are new. All of these conditions must be met before alternative payments may be accepted:4/

- No credits can be given for activities that currently are or will be required under current law or are likely to be required under existing statutory authority in the forseeable future (e.g., through upcoming rulemaking).

- The majority of the project's environmental benefit should accrue to the general public rather than to the source or any particular governmental unit.

- The project cannot be something which the violator could reasonably be expected to do as part of sound business practices.

4/ In extraordinary circumstances, the Agency may choose not to pursue higher penalties for "alternative" work done prior to commencement of negotiations. For example, a firm may recall a product found to be in violation despite the fact that such recall is not required. In order for EPA to forgo seeking higher penalties, the violator must prove that it has met the other conditions herein stated. If the violator fails to prove this in a satisfactory manner, the case development team has the discretion to completely disallow the credit project. As with all alternative projects, the case development team has the discretion to still pursue some penalties in settlement.

- EPA must not lower the amount it decides to accept in penalties by more than the after-tax amount the violator spends on the project.5/

In all cases where alternative payments are allowed, the case file should contain documentation showing that each of the conditions listed above have been met in that particular case. In addition when considering penalty credits, Agency negotiators should take into account the following points:

- The project should not require a large amount of EPA oversight for its completion. In general the less oversight the proposed credit project would require from EPA to ensure proper completion, the more receptive EPA can be toward accepting the project in settlement.

- The project should receive stronger consideration if it will result in the abatement of existing pollution, ameliorate the pollution problem that is the basis of the government's claim and involve an activity that could be ordered by a judge as equitable relief.

- The project should receive stronger consideration if undertaken at the facility where the violation took place.

- The company should agree that any publicity it disseminates regarding its funding of the project must include a statement that such funding is in settlement of a lawsuit brought by EPA or the State.

5/ This limitation does not apply to public awareness activities such as those employed for fuel switching and tampering violations under the Clean Air Act. The purpose of the limitation is to preserve the deterrent value of the settlement. But these violations are often the result of public misconceptions about the economic value of these violations. Consequently, the public awareness activities can be effective in preventing others from violating the law. Thus, the high general deterrent value of public awareness activities in these circumstances obviates the need for the one-to-one requirement on penalty credits.

Each alternative payment plan must entail an identified project to be completely performed by the defendant. Under the plan, EPA must not hold any funds which are to be spent at EPA's discretion unless the relevant statute specifically provides that authority. The final order, decree or judgment should state what financial penalty the violator is actually paying and describe as precisely as possible the credit project the violator is expected to perform.

III. Promoting Consistency

Treating similar situations in a similar fashion is central to the credibility of EPA's enforcement effort and to the success of achieving the goal of equitable treatment. This document has established several mechanisms to promote such consistency. Yet it still leaves enough flexibility for settlement and for tailoring the penalty to particular circumstances. Perhaps the most important mechanisms for achieving consistency are the systematic methods for calculating the benefit component and gravity component of the penalty. Together, they add up to the preliminary deterrence amount. The document also sets out guidance on uniform approaches for applying adjustment factors to arrive at an initial penalty target prior to beginning settlement negotiations or an adjusted penalty target after negotiations have begun.

Nevertheless, if the Agency is to promote consistency, it is essential that each case file contain a complete description of how each penalty was developed. This description should cover how the preliminary deterrence amount was calculated and any adjustments made to the preliminary deterrence amount. It should also describe the facts and reasons which support such adjustments. Only through such complete documentation can enforcement attorneys, program staff and their managers learn from each others' experience and promote the fairness required by the Policy on Civil Penalties.

To facilitate the use of this information, Office of Legal and Enforcement Policy will pursue integration of penalty information from judicial enforcement actions into a computer system. Both Headquarters and all Regional offices will have access to the system through terminals. This would make it possible for the Regions to compare the handling of their cases with those of other Regions. It could potentially allow the Regions, as well as Headquarters, to learn from each others' experience and to identify problem areas where policy change or further guidance is needed.

Use of Penalty Figure in Settlement Discussions

The Policy and Framework do not seek to constrain negotiations. Their goal is to set settlement target figures for the internal use of Agency negotiators. Consequently, the penalty figures under negotiation do not necessarily have to be as low as the internal target figures. Nevertheless, the final settlement figures should go no lower than the internal target figures unless either: 1) the medium-specific penalty policy so provides or 2) the reasons for the deviation are properly documented.

EXHIBIT CX 22
September 15, 2024,
Stormwater Pollution Control Plan

STORMWATER POLLUTION CONTROL PLAN

JACKSON & SON OIL

Prepared for

JACKSON & SON OIL

Site Name: JACKSON & SON OIL
Site Operator/Owner: JACKSON & SON OIL

DEQ Permit File No.: NGEN12Z-ORRZ00043
Primary SIC Code: 5171

Site Contact: Casey Jackson
Phone No.: 503-738-5833
Email: jacksonandsonoil.yahoo.com

Site Physical Address: 84721 Happel Lane
Seaside, Oregon 971038
Clatsop County

September 15, 2024

Prepared by

Justin Pounds
BRIDGEWATER GROUP
7100 SW Hampton, Suite 235, Tigard Oregon

STORMWATER POLLUTION CONTROL PLAN

JACKSON & SON OIL

The material and data in this plan were prepared under the supervision and direction of the undersigned.

BRIDGEWATER GROUP

_____

Justin Pounds, RG
Vice President

CERTIFICATION

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Casey Jackson
Owner

CONTENTS

1 INTRODUCTION

This Stormwater Pollution Control Plan (SWPCP) was prepared on behalf of Jackson & Son Oil (JSO) consistent with the National Pollutant Discharge Elimination System Stormwater Discharge Permit No. 1200-Z (the Permit) issued to JSO by the Oregon Department of Environmental Quality (DEQ) for stormwater discharges from the JSO facility located at 84721 Happel Lane in Seaside, Oregon (the site) (see Figure 1).

This SWPCP addresses the requirements of the Permit with an effective date of 10/26/2023. This SWPCP is prepared consistent with the SWPCP requirements outlined in the Permit Schedule A and the provisions of Title 40, Code of Federal Regulations (CFR), Part 122, and serves as a guidance document for JSO personnel to manage the quality of stormwater discharged from the site to the receiving waters.

1.1 Revisions and Reviews

This SWPCP must be kept current and updated to reflect any substantial changes to the site controls or industrial activities. The SWPCP will be updated within 30 days of making changes and reviewed within 30 days of receiving results from a sampling event that indicate an exceedance of a Permit benchmark.

This SWPCP and all revisions will be kept on site. Revisions to the SWPCP will be submitted to DEQ only if the revisions are made for any of the following reasons:

- Change in site contact.
- In response to a corrective action or inspection.
- Changes to the site or site control measures may significantly change the nature of pollutants present in stormwater discharge or significantly increase the pollutant(s) levels, discharge frequency, volume or flow rate.
- Changes to the monitoring locations.

If DEQ does not comment within 30 days of receipt of the revised SWPCP, the proposed revisions are deemed accepted. DEQ approval is not required prior to implementation of proposed control measures, except for changes in monitoring locations.

2 SITE DESCRIPTION

2.1 Site Location

The site is located at 84721 Happel Lane, on an approximately 1.4-acre site in Seaside, Oregon, in Clatsop County (Figure 1, Site Location). The site sits adjacent to the retail cardlock along Old US Highway 101.

2.2 Site Description

Site features are shown on Figure 2. The site is generally flat and is covered by impervious surfaces including one onsite building (shop), one office, two fuel dispensers and concrete secondary containments for the Bulk Fuel Facility, bulk loading area, and retail fuel.

The shop and office are fully enclosed and has metal siding and metal roofing.

Shop, office, paved, and compacted gravel (i.e., impervious) areas, vegetated and unpacked gravel (i.e., pervious) areas are shown on Figure 2. Purple shaded areas represent impervious areas of the site. The following table shows the approximate size of pervious and impervious surface drainage areas at the site:

Drainage Area	Impervious Area (acres.)	Pervious Area (acres)	Total Drainage Area (acres)
1	0.65	0.75	1.4
2	0.23	0.27	0.59

2.3 Industrial Activities

The industrial activities conducted on site are classified with a primary Standard Industrial Classification (SIC) code of 5171 for Petroluem Bulk Stations and Terminals. The facility operating hours are 7AM to 5PM, Monday through Friday. Retail fueling islands are open 24/7.

2.4 Significant Materials and Potential Pollutants

Generally, potential pollutants in stormwater at the site are associated with traffic, maintenance, loading and unloading bulk fuel. (See Figure 2).

All chemicals are stored in the shop under cover and contained (See Figure 2).

Figure 2 shows the locations of the materials. Table 1 summarizes the storage containers, contents, and locations. All tanks are stored inside.

Table 1 Significant Materials Storage

The potential pollutants are listed below:

Activities	Location	Potential Pollutants	Quantity
Highway Diesel	Bulk Tank Area #1	Petroleum Hydrocarbons	20,000 gallons
Off Road Diesel	Bulk Tank Area #2	Petroleum Hydrocarbons	20,000 gallons
Super Gasoline	Bulk Tank Area #3	Petroleum Hydrocarbons	20,000 gallons
Gasoline	Bulk Tank Area #4	Petroleum Hydrocarbons	20,000 gallons
Gasoline	Retail	Petroleum Hydrocarbons	6,500 gallons
Diesel	Retail	Petroleum Hydrocarbons	20,000 gallons
Auto Oil	Shop	Oil and Grease	1500 gallons

- Galvanized surfaces (e.g., roofs, siding, vents, fencing), as well as vehicle and equipment tires are a potential source of zinc in stormwater.
- Vehicle and equipment brake pads are a potential source of copper in stormwater.
- Leaks/spills of motor oil, gasoline, diesel, antifreeze, and hydraulic fluids from equipment, trucks and vehicles are a potential source of oil and grease, hydrocarbons, and oxygen demand in stormwater.
- Raw Metal from equipment and scraps are a potential source of metals in stormwater.

- Soil erosion from pervious areas and decaying vegetation are a potential source of phosphorus and suspended solids in stormwater.

- Equipment Parts are a source of metals and oil and grease in stormwater.

2.5 Site Stormwater System

The site consists of two drainage areas (see Figure 3). Drainage Area 1 includes all surface drainage of the site and roof drainage from the shop. This drainage area includes one catch basin that is monitored for sediment and equipped with filters located in the fueling pad. Water from this catch basin flows to an Oil Water Separator, then swale before discharging from the site. Runoff from the western portion of the site generally infiltrates but flows as a sheet flow to the swale area then Discharge Point 001 (DP-001).

Drainage Area 002 includes the retail petroleum facility. Current stormwater system includes three catch basins and one discharge point (DP-002).

Site stormwater upgrades are still being designed by Aquarius Environmental and will be included in revised SWPCP once completed. Current plan for site upgrades in Drainage Area 001 include a new bulk fueling pad and catch basin with oil trap, new underground oil water separator with capacity to hold a large spill, and a swale for treatment of sediment before discharging at DP-001. Planned site upgrades in Drainage Area 002 include new catch basins and stormwater system and an OWS before discharge to DP-002.

2.6 Stormwater Monitoring Location

Stormwater samples are collected at Discharge Point 001 (DP-001) and Discharge Point 002 (DP-002).

Monitoring Location	Longitude	Latitude
DP-001	45° 56' 29.51" N	123° 55' 17.72" W
DP-002	45° 56' 27.7548" N	123° 55' 17.706" W

Stormwater Sample Naming Convention will include Discharge Point Location and date.

For Example: Discharge Point 001 collected on September 13, 2023, would be the following:

- DP001-091323

2.7 Sampling Table Parameters and Benchmarks

	Parameter	Units	Benchmark Value
Coastal Georegion	Total Copper	mg/L	0.017
	Total Lead	mg/L	0.018
	Total Zinc	mg/L	0.086
	pH	SU	5.5 – 9.0
	TSS	mg/L	100
Sector Specific (SIC Code 5171)	Total Aluminum	mg/L	1.10
	Total Zinc (Freshwater)	Mg/L	0.35
	Nitrate plus Nitrite Nitrogen	mg/L	10

2.8 Sampling Requirements

Stormwater samples are collected from all monitoring locations at least four times per year, **two samples between January 1 and June 30, and two samples between July 1 and December 31.**

- For each discharge point monitored, collect a single grab sample of stormwater discharge.
- Samples must be representative of the discharge and at the designated monitoring locations (Figure 3)
- Samples are collected with the first 12 hours of a stormwater discharge event. If JSO is unable to collect a sample within the first 12 hours, then the sample should be collected as soon as possible after the first 12 hours, and an explanation for why the sampling was delayed will be documented.

- Samples must be collected at least 14 days apart.

- Sampling for pH - Approved methods for pH sampling require either measuring the pH directly in the flow or analyzing the sample within 15 minutes of sample collection with an approved calibrated pH meter.

Samples will be collected within regular operating business hours, during safe conditions, or during a quarter when there is no discharge.

2.9 Sampling Protocol

The following procedures will be followed when collecting stormwater samples:

- Order a sample kit (i.e., cooler, sampling bottles, temperature blank, and chain-of-custody form) from the laboratory.

- Follow the weather forecast and sample during a storm event that occurs during normal business hours and within the first 12 hours of a discharge.

- Calibrate the pH meter and note in a designated field notebook that calibration was performed, and calibration fluids are current and not expired. If turbidity measurements are to be taken with a meter, calibrate the turbidity meter and document the calibration.

- Wear disposable, powder-free gloves when collecting stormwater samples and keep hands away from the bottle opening to prevent contamination.

- Fill laboratory-supplied sample containers directly (rather than by transferring stormwater from intermediate containers). Fill preserved containers carefully to avoid losing any preservative (i.e., fill the bottle to about 0.5 inch of the top).

- As soon as the sample is collected, cap the sampling bottle and label it (sample name, date, time, sampler, analysis).

- Take pH meter readings at each sampling location and note pH measurements in the field notebook and on the chain-of-custody form (in the comments column).

- Place containers in a cooler with ice. Pack to avoid breakage.

- Fill out a chain-of-custody form provided by the laboratory. Keep one copy of the chain-of-custody form and place remaining copies in a zip-lock bag inside the cooler.

- Tape the cooler closed.

- Arrange for transportation to the laboratory. Make sure samples make it to laboratory under chain of custody, on ice, and within hold times.
    - Hold times for Analytical.
        - Metals – 6 months
        - TSS – 7 days
        - pH – 15 minutes

2.10 Monitoring Variance

Permit registrants may request a monitoring variance for missed samples due to no storm events of sufficient magnitude to produce run-off during regular business hours of operation and safe conditions. For each missed sample, variance requests are due on February 15 and August 15. Report no discharge in the Discharge Monitoring Report and include supporting data and analysis demonstrating why the monitoring did not occur at the time of DMR submission. If DEQ or agent has evidence contradicting the permit registrant's no discharge claim, failure to complete the required monitoring may be a permit violation. Supporting data may include:

- State or federal authorities declared the year a drought year.

- Demonstration that rainfall in the area where the permit registrant's facility is located was 20 percent or more below the three-year average rainfall for that area.

- Photo documentation, rain gauge data, detention basin storage volumes, storm infiltration rate or retention capacity.

2.11 Receiving Waters

Stormwater drainage that does not infiltrate from the site is discharged from the swale onsite to a series of ditches and eventually discharges to the Circle Creek.

3 SITE CONTROL MEASURES

The following operational and structural source control measures are implemented at the site, consistent with the narrative technology-based effluent limits listed in Schedule A of the Permit and the additional Sector P “Land Transportation and Warehousing” for Petroluem Bulk Stations and Terminals technology-based effluent limits and requirements listed in Permit Schedule E. Compliance with required best management practices are described below.

3.1 Minimize Exposure

JSO implements structural and operational source control measures to minimize the exposure of potential pollutants to stormwater runoff.

- To the extent practicable, industrial activities (including any associated materials) that have the potential to contaminate stormwater are conducted indoors or under cover.
- To the extent practicable, materials and products that are stored outside the buildings are stored under cover in shipping containers or inside maintenance shop.
- Equipment maintenance is conducted in designated indoor areas, to the extent practicable.
- Leaking or leak-prone equipment is stored indoors, to the extent practicable, or equipped with absorbent materials or drip pans.
- Drums are stored indoors or in covered areas and are securely closed to minimize exposure of residual petroleum products with stormwater runoff.
- Used oil is stored in the shop.
- Leaks and spills are cleaned promptly to minimize potential exposure in stormwater.

3.2 Oil and Grease

JSO implements oil and grease controls to eliminate or reduce oil and grease concentrations in stormwater discharged from the site. Spill kits and booms are located in the shop. Catch basins are monitored for sheen on a regular basis. Oil water separator is regularly cleaned and inspected.

3.3 Waste Chemicals and Materials Disposal

Waste and metal bins or dumpsters are equipped with lids and closed when not in use.

Municipal and non-hazardous wastes are picked up by a municipal waste management provider and disposed of at a Subtitle D landfill.

3.4 Erosion and Sediment Control

Most of the site is either gravel or paved to minimize erosion. Berms and site grading are also used to isolate and redirect stormwater runoff away from areas of potential erosion. Catch basin filter inserts will be deployed where applicable.

3.5 Debris Control

JSO implements an ongoing inspection program to monitor for discharges of debris and litter into the stormwater system. Debris and litter are picked up upon discovery and placed in an appropriate disposal container.

3.6 Dust Generation and Vehicle Tracking of Industrial Materials

Most of the site, including all vehicle and storage areas, is paved or graveled to minimize generation and tracking of dust. The pavement is swept as needed to minimize the potential for vehicle tracking of materials off site.

3.7 Housekeeping

JSO implements a rigorous housekeeping program, including pavement sweeping (monthly minimum) to remove solids, fluids and debris from paved surfaces; promptly cleaning up leaks or spills; and ensuring regular maintenance of facility vehicles and equipment. The housekeeping program ensures that particulate matter, dust and debris (from industrial sources) are promptly cleaned up, especially from areas where materials are loaded and unloaded, stored or otherwise handled. Materials and products are stored in designated areas. Petroleum products and wastes are stored in a designated area and in appropriately labeled containers.

Additional sector-specific housekeeping measures are described in Section 3.12.

3.8 Spill Prevention and Response Measures

JSO is committed to the prevention of leaks and spills and JSO personnel are trained to respond to spills and leaks safely and promptly. Spill kits are maintained on site to allow for prompt and safe spill response (see Figure 3). If a major spill may reach surface water drainage, local and state government agencies will be notified immediately by the emergency coordinator.

3.8.1 Spill Prevention

Facility equipment is routinely inspected and maintained. Equipment maintenance activities are conducted in an indoor designated maintenance area, away from the stormwater system and adjacent to a spill kit.

Fuel, used oil and antifreeze are stored in 5-gallon buckets and drums within secondary containment. The following measures are implemented to prevent spills at the site:

- Keep container lids securely fastened.
- Clearly label (e.g., “used oil”) containers to facilitate proper response in the event of a spill.
- Do not leave fueling or transfer activities unattended.
- Use pads, drip pans and appropriate transfer equipment (e.g., “suckers”) when transferring used oil.

3.8.2 Spill-Response Procedures

Spill kits containing oil absorbent booms, pads, and granular clay absorbent are located in the shop (see Figure 3). In the event of a spill, immediate response is required to prevent the spill from entering the stormwater system:

- Immediately assess the situation, including, to the extent possible, the source of the spill, the spilled material nature and hazards, and proximity to the stormwater system or pervious areas of the site.
- If the spill is minor (i.e., can be contained and cleaned up safely and with spill-response materials available on site), proceed with the spill response procedures listed in the following section, and report to Casey Jackson when cleanup is complete.
- If the spill is beyond the ability of a single employee to control, notify the maintenance manager immediately. Casey Jackson will determine proper spill response procedures.
- If the spill is major (i.e., cannot be contained and cleaned up safely and with spill-response materials available on site), contact Casey Jackson immediately. The maintenance manager will contact a qualified spill-response contactor as soon as possible and notify the appropriate agencies.

3.8.2.1 Minor Spill Response

A spill is considered minor if:

- The spilled material is localized and easily controlled at the time of the spill.
- The spilled material is not likely to reach storm drains, surface water, or groundwater.
- There is little danger of fire, explosion, or risk to human health.

To respond to a minor spill, immediately locate a spill kit and implement measures to contain the spill and divert it from the stormwater system or pervious areas. Notify Casey Jackson as soon as possible. Spill-response actions may include:

- Use of absorbent material to contain the spill, including:
  - Surrounding the perimeter of the spill with oil-absorbent booms or berms of loose absorbent material
  - Placing absorbent pads or loose absorbent material to absorb spills.
- Isolate nearby drainage structures to reduce the potential for the spill to reach the stormwater system using oil-absorbent booms or berms of loose absorbent material.
- Clean up all spill-response materials and store them in a designated, labeled and covered container (e.g., drum with lid) prior to disposal at a permitted facility.

3.8.2.2 Major Spill Response

A spill is major if:

- The spilled material enters storm drains, surface water, or groundwater (regardless of spill size).
- The spill cannot be contained and cleaned up safely and with spill-response materials available on site.
- The spill requires special training and equipment to clean up, as determined by the maintenance manager.
- The spilled material is dangerous to human health or there is a danger of fire or explosion.

To respond to a major spill, immediately notify Casey Jackson, who will coordinate cleanup and seek assistance from an outside contractor, if necessary.

3.8.2.3 Notifications

All spills must be reported to the maintenance manager, who will determine if additional notifications are necessary.

Casey Jackson……503-440-3975

Emergency Response Notification
National Response Center 800-424-8802
Oregon Emergency Response System (OERS) 800-452-0311
City of Seaside 503-738-6311

Emergency Response Contractor
NRC Environmental Services..... 800-33-SPILL

3.8.2.4 Reporting

The permittee must report any noncompliance that may endanger health or the environment. Any information must be provided orally (by telephone) to the DEQ regional office or Oregon Emergency Response System (1-800-452-0311) as specified below within 24 hours from the time the permittee becomes aware of the circumstances.

Overflows:

(1) Oral Reporting within 24 hours to the Oregon Emergency Response System (OERS) at 1-800-452-0311. The reporting must include location, receiving water, volume, description of component that the release occurred and estimated date and time.

The OERS incident number and a brief description of event must be reported to the DEQ regional office within 24 hours, or during normal business hours, whichever is earlier:

The following information must be provided in writing to the DEQ regional office within 5 days of the time the permittee becomes aware of the overflow:

- The OERS incident number (if applicable);
- (b) The cause or suspected cause of the overflow;
- (c) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the overflow and a schedule of major milestones for those steps;
- (d) Steps taken or planned to mitigate the impact(s) of the overflow and a schedule of major milestones for those steps; and
- (e) For storm-related overflows, the rainfall intensity (inches/hour) and duration of the storm associated with the overflow.

During normal business hours, the DEQ regional office must be called. Outside of normal business hours, DEQ must be contacted at 1-800-452-0311 (Oregon Emergency Response System).

A written submission must be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission must contain a description of the noncompliance and its cause; The period of noncompliance, including exact dates and times; The estimated time noncompliance is expected to continue if it has not been corrected; Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance; and public notification steps taken, pursuant to General Condition B7.

All pertinent information related to a spill must be recorded on a Spill Record form (see Appendix A), including but not limited to a description of the event, the equipment or procedural failures that led to the spill, cleanup measures conducted, available analytical data, and future physical and/or procedural changes that will be implemented to mitigate the potential for future releases. The maintenance manager is responsible for reporting any spill that exceeds a reportable quantity, consistent with the following guidelines:

- Petroleum product spills of any amount that are likely to contact waters of the state (Circle Creek, groundwater, and stormwater system) must be reported within one hour to the National Response Center, OERS, and the City of Astoria.

- Petroleum product spills greater than 42 gallons to land (including soil, gravel, or asphalt, but not indoor areas that do not have the potential to reach waters of the state) that are not likely to contact waters of the state must be reported within one hour to OERS and the City of Astoria.

- Release of hazardous materials equal to or greater than the quantity listed in 40 CFR Part 302 (Table 302.4—List of Hazardous Substances and Reportable Quantities requires immediate notification of the National Response Center, OERS, and the City of Astoria.

3.9 Preventative Maintenance

JSO implements a preventative maintenance program that regularly evaluates the condition of drainage areas and source controls to minimize the potential for discharging pollutants with stormwater. At minimum the preventative maintenance program includes the following:

- Monthly inspections of the stormwater management system, including the pollution-control measures and treatment system.

- Oil Water Separator (OWS) cleaning: OWS are inspected monthly and cleaned twice a year at a minimum.

- Catch basins cleaning. Catch basins are cleaned monthly at a minimum or as needed during the wet season.

- Pavement sweeping to maintain sediment- and debris-free surfaces. Pavement is swept as needed or monthly at a minimum.

- Regular pickup of waste materials and disposal at permitted disposal facilities.

3.9.1 Monthly Stormwater Inspections

Monthly inspections of the facility stormwater system and drainage areas are conducted to evaluate the condition of site control measures. Inspections focus on:

- Visual inspection of the site and identification of sources of pollutants (i.e., industrial materials, residue or waste) to which stormwater is exposed. New sources of pollutants must be added to the SWPCP. Visual inspections shall include the following areas:
    - Bulk Fueling areas
    - Fuel Transfer areas
    - Material storage areas
    - Operations areas
- Leaks or spills from equipment, trucks, vehicles, drums, tanks and other containers.

- Off-site tracking of waste materials or sediment where vehicles enter or exit the site and/or internal tracking.

- Tracking or blowing of raw, final or waste materials that results in exposure of these materials to stormwater.

- Evidence of, or the potential for, pollutants entering the drainage system or receiving waters.

- Evaluation of the condition of source control measures and the need for maintenance and/or repairs, including the spill kit(s), filter fabric inserts, oil absorbing booms, and/or filtration media.

- Visual inspection of stormwater at the stormwater monitoring location (see Figure 3), when discharge is occurring during regular business hours, for the presence of floating, suspended or settleable solids, foam, visible oil sheen, odor, color, or other obvious indicators of stormwater pollution.

Conduct visual observations of a sample in a clean, colorless glass or plastic container in well-lit area during regular business hours of operation and safe conditions.

Even if a monitoring waiver is issued for DP-001 or DP-002, inspections and visual monitoring must continue.

Monthly inspections and maintenance activities are recorded on the Monthly Stormwater Inspection and Maintenance Record (Appendix B).

3.10 Employee Education

A continuing program of employee orientation and education is implemented to raise awareness about site-specific control measures and prompt and safe response to a spill or accident. JSO personnel are informed of the goals of the SWPCP and control measures such as:

- Good housekeeping and debris/litter control
- Measures to minimize exposure of stormwater runoff to potential pollutants
- Erosion and sediment control measures
- Waste storage and disposal
- Oil and grease control measures
- Unauthorized discharges to the stormwater system
- Spill prevention and response
- Preventive maintenance of equipment and stormwater control measures
- Personnel responsibilities (pollution prevention, control management, storage and handling of materials, monitoring/inspections, and corrective actions)
- Monitoring, inspection, reporting, sampling, and documentation requirements.

This training is included with new-employee orientation (within 30 days of the start of employment) and is repeated annually as part of the facility safety training program. A sample employee education documentation form and power point training outline are included in Appendix C.

3.11 Non-stormwater Discharges

There are no known unauthorized non-stormwater discharges at the site.

The following non-stormwater discharges are authorized under the Permit:

- Landscape watering providing pesticides and fertilizers has been applied in accordance with manufacturers' instructions
- Potable water, including water line flushing
- Pavement wash waters where no detergents or hot water are used, no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed), and surfaces are swept prior to washing
- Routine external building wash-down that does not use detergents or hot water
- Fire hydrant flushing
- Discharges from firefighting activities
- Uncontaminated air conditioning condensate
- Uncontaminated groundwater or spring water

3.12 Sector-Specific Control Measures

In addition to the Good Housekeeping requirements in Schedule A.1 of the Permit, JSO also maintains the following sector specific control measures consistent with E.P.1.

- Vehicle and Equipment Storage Areas. Minimize the potential for stormwater exposure to leaky or leak-prone vehicles/equipment awaiting maintenance. Consider the following (or other equivalent measures): use of drip pans under vehicles/equipment, indoor storage of vehicles and equipment, installation of berms or dikes, use of absorbents, roofing or covering storage areas, and cleaning pavement surfaces to remove oil and grease.
- Fueling Areas. Minimize contamination of stormwater discharge from fueling areas. Consider the following (or other equivalent measures): Covering the fueling area; using spill/overflow protection and cleanup equipment; minimizing stormwater run- on/runoff to the fueling area; using dry cleanup methods; and treating and/or recycling collected stormwater.
- Material Storage Areas. Maintain all material storage vessels (e.g., for used oil/oil filters, spent solvents, paint wastes, hydraulic fluids) to prevent contamination of stormwater and plainly label them (e.g., "Used Oil," "Spent Solvents," etc.).

Consider the following (or other equivalent measures): storing the materials indoors; installing berms/dikes around the areas; minimizing stormwater to the areas; using dry cleanup methods; and treating and/or recycling collected stormwater.

- Vehicle and Equipment Cleaning Areas. Minimize contamination of stormwater discharge from all areas used for vehicle/equipment cleaning. Consider the following (or other equivalent measures): performing all cleaning operations indoors; covering the cleaning operation, ensuring that all wash water drains to a proper collection system (i.e., not the stormwater drainage system); treating and/or recycling collected wash water, or other equivalent measures.

- Vehicle and Equipment Maintenance Areas. Minimize contamination of stormwater discharge from all areas used for vehicle/equipment maintenance. Consider the following (or other equivalent measures): performing maintenance activities indoors; using drip pans; keeping an organized inventory of materials used in the shop; draining all parts of fluid prior to disposal; prohibiting wet clean up practices if these practices would result in the discharge of pollutants to stormwater drainage systems; using dry cleanup methods; treating and/or recycling collected stormwater, minimizing run on/runoff of stormwater to maintenance areas.

- Employee Training. Address the following activities, as applicable: used oil and spent solvent management; fueling procedures; general good housekeeping practices; proper painting procedures; and used battery management.

- Perform maintenance activities indoors whenever possible. Use drip pans and drain all parts of fluid prior to disposal.

4 REPORTING AND RECORDKEEPING

4.1 Discharge Monitoring Report

Stormwater monitoring results (analytical sampling data and field pH measurements) are reported using a DEQ-approved Discharge Monitoring Report (DMR) form. The data must be entered into the DMR form and submitted electronically every quarter, along with laboratory reports and records of pH meter calibration and field measurements.

Submit DMR by the following due date even if there was no sample collected. Signed and certified DMRs to be submitted on "Your DEQ Online."

Reporting Quarters	Months	DMR Due Date
1st	July - September	November 15th
2nd	October - December	February 15th
3rd	January - March	May 15th
4th	April - June	August 15th

4.2 Reporting Requirements Summary

Permit Condition	Permit Schedule	Report Required	Due Date
Must not cause or contribute to a violation of instream water quality standard	Schedule A.3	Water Quality Standards Corrective Action Report	No later than 30 calendar days after receiving monitoring results
Certification of mass reduction measures installed during previous permit cycles	Schedule A.6	Stamped certification	December 31, 2021
SWPCP submission	Schedule A.9	SWPCP revision	No later than 30 calendar days after the completion of modification or as requested by DEQ or agent

Sample results exceed applicable statewide or sector-specific benchmarks or visual observations show signs of pollution	Schedule A.11	Tier 1 Report	No later than 30 calendar days after receiving monitoring results; Retain on-site and submit upon request
Geometric mean exceeds statewide benchmarks in full reporting year (July1 – June 30)	Schedule A.12	Tier 2 Report	No later than December 31, six months after June 30 (date triggered)
		Tier 2 Mass Reduction Waiver	
		Tier 2 Background Waiver	
Confirmation of Tier 2 implementation	Schedule A.12.i.iv	Notification confirming Tier 2 proposal installation	No later than 30 calendar days of implementation
Sample results continue to exceed benchmark for Tier 2 parameters post-implementation	Schedule A.11.c.v	Tier 1 Report	No later than 30 calendar days after receiving monitoring results; Retain on-site and submit upon request
Trigger numeric water quality-based effluent limit	Schedule A.13.e	WQBEL notification and compliance schedule request	No later than 30 calendar days after receiving monitoring results
Submission of monitoring results after the preceding calendar quarter	Schedule B.14	Discharge Monitoring Report	No later than February 15, May 15, August 15, and November 15
Sample results exceed numeric effluent limitations	Schedule B.15	Exceedance Report	No later than 30 calendar days after receiving monitoring results and increase monitoring frequency

5 CORRECTIVE ACTIONS

5.1 Tier I Corrective Action

A Tier I Report must be prepared in response to any exceedance of a Permit benchmark or visual impairment of stormwater discharge. Each Tier I Report should include:

- A summary of an investigation of the cause of the elevated pollutant levels, including a previous and/or planned source control measures to minimize exposure of the pollutant source to stormwater.
- A statement confirming the SWPCP was reviewed following the receipt of the monitoring data showing a benchmark exceedance to determine whether the SWPCP controls were properly installed, maintained, and selected.

- Corrective action (additional control measures or modifications/improvements to existing controls) implemented in response to the benchmark exceedance and the implementation schedule. Corrective actions must be implemented before the next storm event, if possible, or no later than 30 days after receipt of the monitoring results. Justification for extending the implementation beyond 30 days must be included in the report and the corrective action must be implemented as soon as practicable.

- Tier I Report - Summarize the following information in a Tier I report:

    - (1) The results of the investigation referred to in condition 10.a.i, above.

    - (2) Corrective actions taken or to be taken, including date corrective action completed or expected to be completed. Where the permit registrant determines that corrective action is not necessary, provide the basis for this determination.

    - (3) Document whether SWPCP revisions are necessary.

Tier I Reports must be filed on site and submitted to the DEQ upon request.

5.2 Tier II

Tier II Triggering events include:

i. The geometric mean of qualifying sample results collected at any monitoring point exceeds any applicable statewide benchmarks, during each full reporting year.

ii. For the pH benchmark, if 50 percent or more of qualifying sample results collected at any monitoring point during two full reporting years, are outside of the pH benchmark range.

5.3 Tier II Report

Tier 2 Corrective Actions and Reporting summary, you will need to:

• Prepare and submit a Tier 2 Report which includes treatment measures or a Tier 2 Mass Reduction Waiver (both require a stamp from an engineering professional) by December 31st (6 months after the full reporting year).

• Once proposal is approved by DEQ, fully implement the Tier 2 Corrective Actions by Sept 30th (1 year and 9 months after the report submittal deadline). Proposal shall not be implemented until DEQ approval.

5.3.1 Tier II Exemptions

Exemptions from Tier II include the following:

- **Tier II Mass Reduction Waiver**: If the permit registrant implements or has implemented volume reduction measures, such as low impact development practices, that will or has resulted in reductions of the mass load of pollutants in the discharge below the mass equivalent of the applicable statewide benchmark(s). An Oregon Professional Engineer (PE) or Oregon certified engineering geologist (CEG) must design and stamp the portion of the SWPCP that addresses the mass reduction measures.
- **Tier II Background Waiver**: The permit registrant may request a background waiver exemption from the requirements in Schedule A.12.f.iii and A.12.h.i above if the permit registrant can sufficiently demonstrate the benchmark exceedance(s) is attributed solely to the presence of the pollutant(s) in natural background and is not associated with industrial activities at the site. The background waiver request must include the supporting rationale and any data collected by the facility or others (including peer-reviewed literature studies) which is used to demonstrate that the exceedances are due solely to background conditions that describe and quantify the levels of background pollutants in the discharge.

5.3.2 Corrective Actions for Sector-Specific Benchmarks

Tier 1 Corrective Action: Required for any exceedance of a sector-specific benchmark (see above).

6 RECORDKEEPING

Records of the following documents are maintained on site for at least three years and make them available to the DEQ upon request:

- A copy of this SWPCP and revisions
- A copy of the Permit
- Permit assignment letter and Permit coverage documents
- DMRs
- Inspection reports

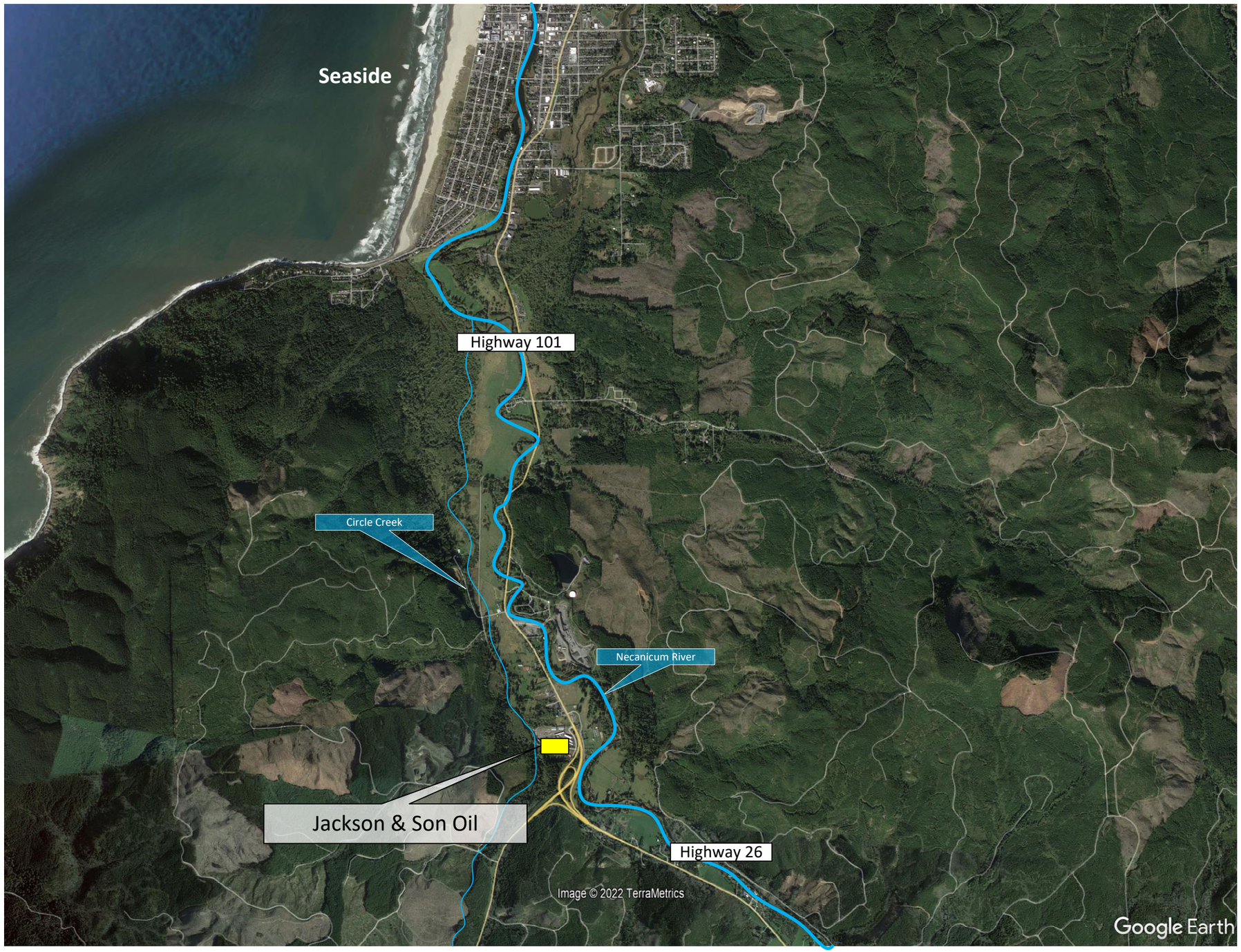
- Employee education records
- Maintenance and repair of stormwater source control and treatment measures
- Spill records, if applicable
- Tier I Reports and corrective action implementation records
- Tier II Report, if applicable

LIMITATIONS

The services undertaken in completing this plan were performed consistent with generally accepted professional consulting principles and practices. No other warranty, express or implied, is made. These services were performed consistent with our agreement with our client. This plan is solely for the use and information of our client unless otherwise noted. Any reliance on this plan by a third party is at such party's sole risk.

Opinions and recommendations contained in this report apply to conditions existing when services were performed and are intended only for the client, purposes, locations, time frames, and project parameters indicated. We are not responsible for the impacts of any changes in environmental standards, practices, or regulations subsequent to performance of services. We do not warrant the accuracy of information supplied by others, or the use of segregated portions of this plan.

FIGURES

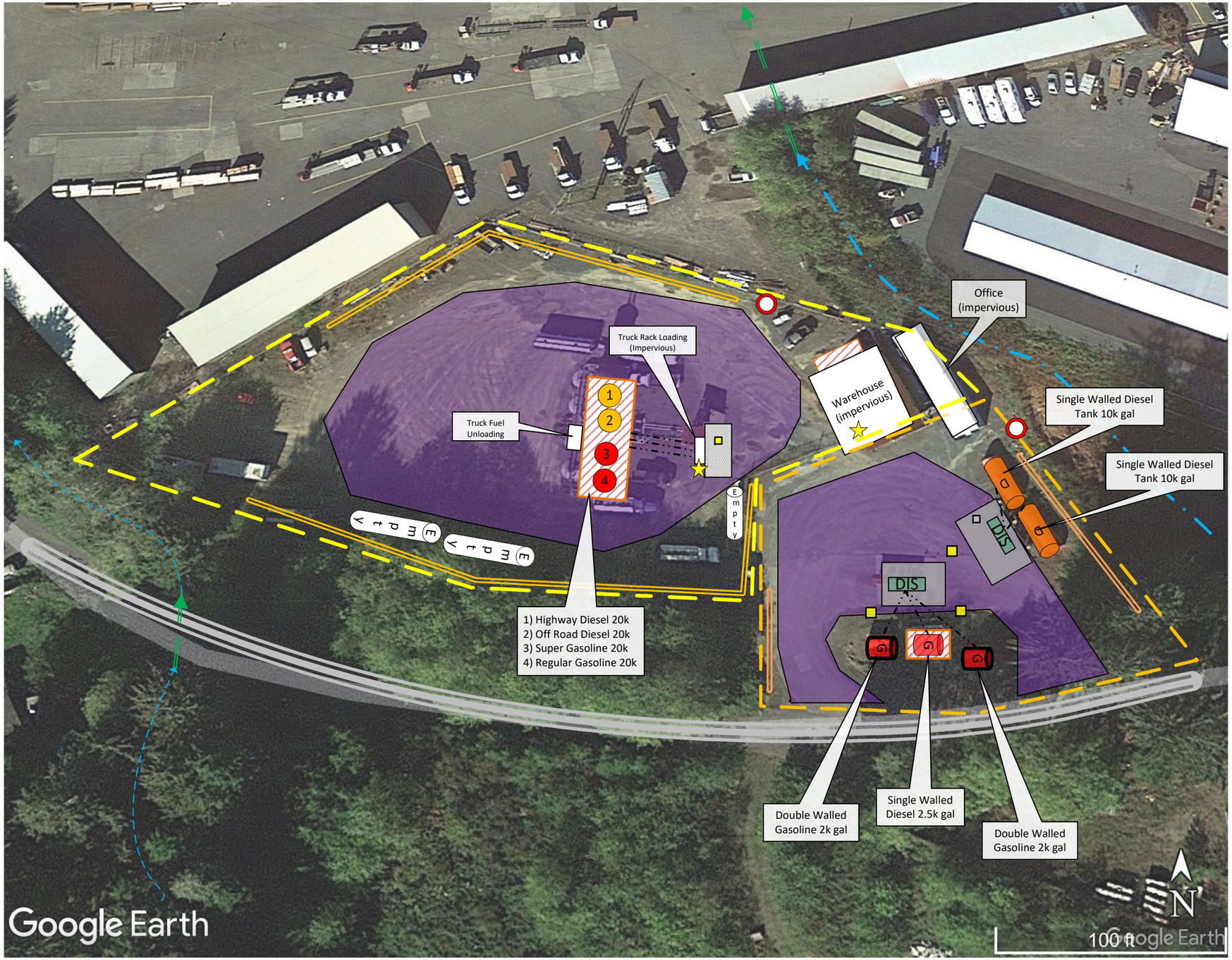


BRIDGEWATER GROUP

N

Jackson & Son Oil
Site Location

Figure
1



- Bulk Fuel Area
- Retail Cardlock Area
- Discharge Point
- Spill Kit
- Secondary containment (impervious)
- Berm
- Gasoline Above Ground Storage Tank
- Diesel Above Ground Storage Tank
- Concrete Pad (Impervious)
- Catch basin for current fueling BMP.
- Culvert
- DIS — Retail Fuel Dispenser
- Surface Water
- Impervious
- Dispenser Fuel Line

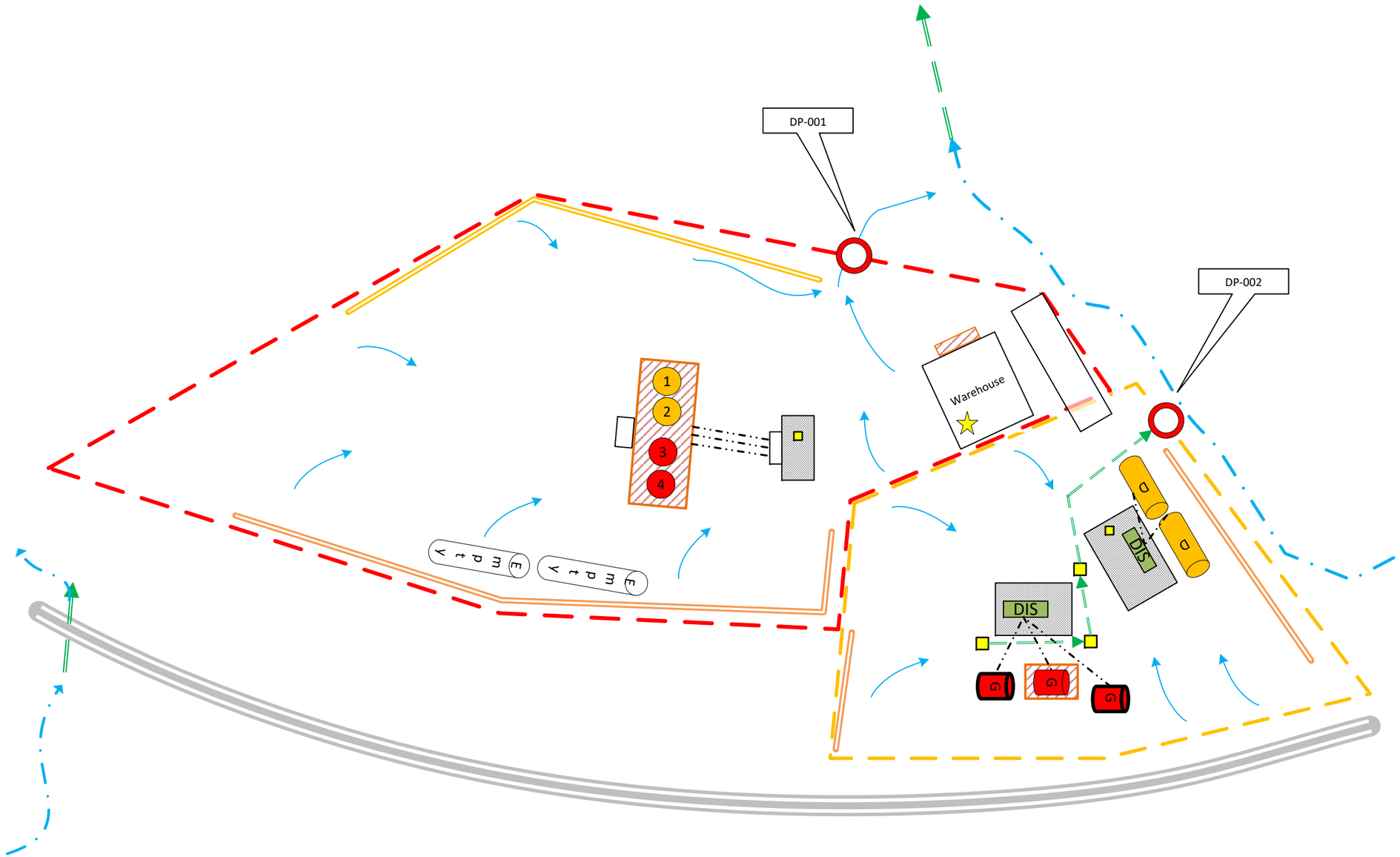
BRIDGEWATER GROUP

0.0 in. 0.6 in. 1.1 in. 2.1 in.
50 ft. 100 ft.

N

Jackson & Son Oil
Current Site Features
Seaside, Oregon

Figure 2



Drainage Area 001 (Bulk Fuel Area)

Drainage Area 002 (Retail Cardlock Area

Discharge Points

Spill Kit

Secondary containment

DIS Fuel Dispenser

Gasoline Above Ground Storage Tank

Diesel Above Ground Storage Tank

Concrete Pad

Catch basin

Berm

Culvert

Stormwater Conveyance

Surface Water

Dispenser Fuel Line

BRIDGEWATER GROUP

0.0 in. 0.6 in. 1.1 in. 2.1 in.

50 ft. 100 ft.

N

Jackson & Son Oil
Current Stormwater Features
Seaside, Oregon

Figure 3

APPENDIX A
SPILL REPORT FORM

SPILL/RELEASE REPORT

1 - GENERAL INFORMATION

a. Company Name: _____

b. Address: _____

_____

c. Company Contact Person: _____

d. Phone Number(s): _____

e. Specific on-site location of the release (and address if different from above):

_____

_____

_____

Please provide a map of the site showing area(s) where the release occurred, any sample collection locations, location of roads/ditches/surface water bodies, etc.

2 - RELEASE INFORMATION

a. Date/Time Release started:_____ Date/Time stopped:_____

b. Release was reported to (specify Date/Time/Name of Person contacted where applicable):

ODEQ _____

OERS _____

NRC _____

Other (describe):_____

c. Person(s) reporting release:_____

d. Name, quantity and physical state (gas, liquid, solid or semi-solid) of material(s) released:

_____

_____

Please attach copies of material safety data sheets (MSDS) for released material(s).

e. The release affected: ____Air ____Groundwater ____Surface Water ____Soil ____Sediment

f. Name and distance to nearest surface water body(s), even if unaffected (include locations of creeks, streams, rivers and ditches that discharge to surface water on maps):

_____

Has the release reached the surface water identified above?: ____Yes ____No

Could the release potentially reach the surface water identified above? ____Yes ____No

Explain:_____

_____

g. Depth to nearest aquifer/groundwater:_____

Is nearest aquifer/groundwater potable (drinkable)? ____Yes ____No

Has the release reached the nearest aquifer/groundwater? ____Yes ____No

Explain:_____

_____

h. Release or potential release to the air occurred? ____Yes ____No

Explain:_____

_____

i. Was there a threat to public safety? ____Yes ____No

j. Is there potential for future releases? ____Yes ____No

Explain:_____

_____

k. Describe other effects/impacts from release (emergency evacuation, fish kills, etc.):

_____

_____

_____

l. Describe how the release occurred. Include details such as the release source, cause, contributing weather factors, activities occurring prior to or during the release, dates and times of various activities, first responders involved in containment activities, etc.:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

3 - SITE INFORMATION

a. Adjacent land uses include (check all that apply and depict on site maps):

____Residential ____Commercial ____Light Industrial ____Heavy Industrial

____Agricultural ____Other (describe):_____

b. What is the population density surrounding the site:_____

c. Is the site and/or release area secured by fencing or other means? ____Yes ____No

d. Soil types (check all that apply): ____alluvial ____ bedrock ____ clay ____sandy

____silt ____ silty loam ____artificial surface (cement/asphalt/etc.)

e. Describe site topography:_____

_____

_____

4 - CLEANUP INFORMATION

a. Was site cleanup performed? ____Yes ____No

If No, explain:_____

_____

b. Who performed the site cleanup?

Company Name: _____

Address: _____

_____

Cleanup Supervisor: _____

Phone Number(s): _____

c. Has all contamination been removed from the site? ____Yes ____No

If No, explain:_____

_____

d. Estimated volume of contaminated soil removed:_____

e. Estimated volume of contaminated soil left in place:_____

f. Was a hazardous waste determination made for cleanup materials? ____Yes ____No

g. Based on the determination, are the cleanup materials hazardous wastes?

____Yes ____No If Yes, list all waste codes:_____

h. Was contaminated soil or water disposed of at an off-site location? ____Yes ____No

If yes, attach copies of receipts/manifests/etc., and provide the following information:

Facility Name: _____

Address: _____

_____

Facility Contact: _____

Phone Number(s): _____

i. Is contaminated soil or water being stored and/or treated on-site? ____Yes ____No

If yes, please describe the material(s), storage and/or treatment area, and methods utilized (attach additional sheets if necessary):

_____

_____

_____

_____

j. Describe cleanup activities including what actions were taken, dates and times actions were initiated and completed, volumes of contaminated materials that were removed, etc. (attach additional sheets or contractor reports if necessary or more convenient):

_____

_____

_____

_____

_____

5 - SAMPLING INFORMATION

Attach copies of all sample data and indicate locations of sample collection on maps.

a. Were samples of contaminated soil collected? ____Yes ____No ____N/A

b. Were samples of contaminated water collected? ____Yes ____No ____N/A

c. Were samples collected to show that all contamination had been removed?

____Yes ____No ____N/A

d. Describe sampling activities, results and discuss rationale for sampling methods:

_____

_____

_____

_____

_____

_____

6 - SPILL REPORT CHECKLIST

To ensure that you have gathered all pertinent information, please complete the following checklist:

____ Map(s) of the site showing buildings, roads, surface water bodies, ditches, waterways, point of the release, extent of contamination, areas of excavation and sample collection locations attached.

____ Material Safety Data Sheet (MSDS) for released material(s) attached. **Note: an MSDS is not required for motor fuels.**

____ Sampling data/analytical results attached.

____ Receipts/manifests (if any) for disposal of cleanup materials attached.

____ Contractor reports (if any) attached.

If you would like to submit your report by e-mail it can be submitted electronically to: DOSPILLS@deq.state.or.us

APPENDIX B

MONTHLY STORMWATER INSPECTION AND MAINTENANCE REPORT

MONTHLY STORMWATER INSPECTION AND MAINTENANCE LOG
Jackson Son Oil

Inspection Date: _____

Did a Stormwater Discharge Occur this Month? _____ Was Stormwater Discharging during the Inspection? _____

Monthly inspections of the facility stormwater system and drainage area are conducted to evaluate the condition of site controls. Inspections focus on:
- Visual inspection of the facility stormwater system and identification of sources of pollutants to which stormwater is exposed, including leachate and illicit discharges.
- Leaks or spills from equipment and vehicles.
- Off-site tracking of waste materials or sediment where vehicles enter or exit the site.
- Tracking or blowing of waste materials.
- Evidence of, or the potential for, pollutants entering the drainage system.
- Evaluation of the condition of site control measures, including the treatment ponds, and the need for maintenance and/or repairs.
- Visual inspection of stormwater at the stormwater sampling locations (see Figure 2), when discharge is occurring during regular business hours, for the presence of floating solids (associated with industrial activity), foam, visible oil sheen, and discoloration.

Checklist Item	(Yes/No)	Additional Information (e.g., Location, Source, Detailed Description, Corrective Action Implemented [if applicable] and Implementation Date)
Monthly Visual Monitoring **Date of Visual Monitoring Assessment:**_____		
Was Stormwater Discharging during the Inspection? _____		
There are no floating solids (from industrial activities), foam, oil sheen, or discoloration visible in stormwater discharge at Monitoring Location 001 .		
There are no floating solids (from industrial activities), foam, oil sheen, or discoloration visible in stormwater discharge at Monitoring Location 002 .		
Monthly Stormwater Inspection **Date of Inspection:**_____		
Have excessive amounts of solids accumulated on paved surfaces?		
Is there evidence of discharges, leaks, or spills of petroleum products?		
Are the spill kits properly stocked and in their designated locations (see Figure 2)?		
Are the dust control measures effectively controlling dust?		
Is runoff or lechate generated during the dust control activities?		
Is the equipment rinse area contained to encourage infiltration of rinse water and minimimze the potential for discharge to the stormwater system?		
Is there evidence of non-stormwater discharges (e.g., dust suppression water, wash water) to storm drains?		
Is there evidence of tracking of materials or waste from indoor areas to the outside?		
Is there evidence of tracking of waste or sediment onto public streets where vehicles enter or exit the site?		
Do sediment booms require replacement?		
Does Oil Water Separator require cleaning?		
Does the Swale show excessive erosion?		
Does the swale show excessive solids accumulation (based on dry weather inspections)? Swale sediment should be removed when the sediment depth exceeds one foot.		
Stormwater System Maintenance: Note stormwater system preventive maintenance activities performed this month.		

Inspected By:	Signature:

I certify, under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

APPENDIX C

EMPLOYEE TRAINING DOCUMENTATION FORM & TRAINING OUTLINE

Employee Education Record
Jackson & Son Oil

Instructor(s)_____

Date and Time of Training _____

A continuing program of employee orientation and education is maintained to raise awareness about site-specific control measures and prompt and safe response to a spill or accident. This training is included with new-employee orientation (within 30 days of the start of employment) and is repeated annually as part of the facility safety training program.

The undersigned JSO personnel have been informed of the goals of site control measures of the 1200Z permit, including:

- Good housekeeping and debris/litter control
- Measures to minimize exposure of stormwater runoff to potential pollutants
- Erosion- and sediment-control measures
- Waste storage and disposal
- Oil and grease control measures
- Spill prevention and control
- Preventive maintenance of equipment and pollution-control measures
- Unauthorized discharges to the stormwater system

Employee Name	Employee Signature

SWPCP Training

All Metals Fabrication

Prepared by Bridgewater Group

1200 Z Stormwater Permit

- Visual Monitoring – logbook
- Semi-annual (2 events):

  TSS, pH, oil & grease, metals
- Submit results Quarterly via electronic DMR to DEQ
- Benchmark Exceedances

Best Management Practices (BMPs)

- Containment
- Stormwater Diversion
- Covering (stockpiles)
- Dust suppression during dry months
- Good Housekeeping
- Treatment: OWS, Filters, Booms
- Preventative Maintenance/Inspections (catch basin and stormline cleanout)
- Debris and Erosion Control

Monitoring Frequency

- Impairment pollutants must be monitored four times per year
- Numeric effluent limitation change: two times per year
- Monitoring year spans: July 1 through June 30
- Two distinct semi-annual frequencies:

July 1 – December 31
January 1 – June 30

Reporting Quarters	Months	DMR Due Dates
1st	July-September	November 15
2nd	October-December	February 15*
3rd	January-March	May 15
4th	April-June	August 15*

*Variance request may be submitted semi-annually as applicable

Monthly SW Inspections

- Improper storage of containers
- Document any spills
- Debris or contamination in settling basins, detention pond, or catch basins
- Drainage through the culverts and drainage ditches
- Floating solids
- Asphalt areas that need sweeping
- Sheen in drainage ditches, catch basins or on pavement
- Sawdust or other floating solids in detention pond or discharge point.

TIPS FOR STAYING IN COMPLIANCE

- Corrective Actions
  - Tier I
  - Tier II
- Monitoring Waivers
- Monitoring Variance Requests ("No Discharge" Reporting)
- Stormwater Sampling
  - pH calibration, measurement and documentation
  - Field filtering
  - Sample preservation and hold times
- Data Quality

Oil Storage

- Secondary containment
  - Tanks
  - Drums
  - Operating Equipment

STORMWATER SAMPLING

- Sample within the first 12 hours of discharge
  - If not practicable, document why
- Sample within regular business hours
- Samples must be at least 14 days apart
- At least 2 samples must be collected between July and December
- At least 2 samples must be collected between January and June
- TIP: Exceeding a benchmark is not a permit violation; missing a sample is a violation, so never miss a sample and start sampling early in the season

STORMWATER SAMPLING

- Designate at least 2 staff to sampling and make sure they receive proper training
- Be aware of the hold times
  - Metals – 6 months
  - TSS – 7 days
  - Oil & Grease – 14 days
- Deliver the samples to the lab as soon as practicable and within the shortest hold time
  - Coordinate with the lab ahead of time if your samples have a short hold time (E. coli)
  - Select appropriate sampling time and day of the week if your samples have a short hold time

STORMWATER SAMPLING

- Sample chain of custody and preservation
  - Collect samples directly into lab-provided bottles
  - Do not overfill bottles that contain a preservative
  - Cap and label bottles, and place into a lab-provided cooler
    - Date/time, sample ID
  - Pack cooler with ice and re-fill with ice, as necessary to keep the temperature < 4 degrees Celsius
  - Place bottles and/or ice in zip lock bags
  - Fill out and sign the chain of custody form and place inside a zip lock bag inside the cooler
    - Date/time, sample IDs, analyses, sampler name and signature, and additional notes (e.g., field filtering)
  - Tape cooler shut

STORMWATER SAMPLING

- pH must be measured in the field
  - Use a calibrated pH meter (no pH paper!) and document calibration
    - Meter should be calibrated within 1-2 days of sampling
    - Calibration should follow manufacturer's instructions and calibration solutions
    - Calibration must be documented
  - Measure pH within 15 minutes of sample collection
    - Document the sample collection time and the pH measurement time
  - pH calibration and measurement records must be submitted with DMR

STORMWATER SAMPLING

- Example pH calibration and measurement record
  - Date/time of calibration
  - Calibration results
  - Date/time of measurement
  - Measurement results
  - Name/signature of sampler

TIER I CORRECTIVE ACTIONS

- Response to any exceedance of a benchmark or impairment pollutant reference concentration
  - Within 30 days of receipt of sampling results:
    - Investigate the cause and review SWPCP
    - Select a additional source control BMP (operational or structural at minimum) and implement as soon as practicable
    - Document corrective action and implementation schedule in Tier I Report
  - Tier I Reports prepared in response to a benchmark exceedance are kept on site
  - Tier I Reports prepared in response to an impairment pollutant reference concentration exceedance must be submitted within 60 days of receipt of lab report

MONITORING WAIVERS

- Monitoring waivers allow you to suspend sampling for remaining permit term if geometric mean of the last 4 consecutive samples is below benchmark/reference concentration
  - Must be requested in writing and approved by DEQ/Agent
  - Waivers are requested for specific sampling location and parameter
- TIP: Apply for a monitoring waiver as soon as eligible

MONITORING VARIANCE REQUESTS

- If you are not able to collect the minimum number of samples due to "no discharge" conditions (resulting from infiltration or re-use):
  - Report "no discharge" on the February 15 and August 15 DMR
  - Request a monitoring variance that includes:
    - A hydrologic assessment completed using standard engineering practices and site-specific data (e.g., measured infiltration rates, flow meter data)
    - Inspection records documenting "no discharge" during business hours (photos can be helpful)
    - Rainfall records from nearby rain gauge
      - If publicly-available rain gauge is far from your site or only publishes 24-hour rainfall depths, consider installing a rain gauge on site
      - Rainfall records should be recorded in hourly increments to differentiate between rainfall that occurs within and outside of business hours

Materials Management

- **Drum Handling**
  - 55–gallon drums are transported by forklift
  - Store drums, empty or full, under cover
- **Used Oil**
  - Transported off site

Preventative Maintenance

- Catch Basin Filters and booms
- Spill Kits
- Sweeping
- Secondary containment
- Operating equipment
- Vehicle maintenance

Spill Response Procedures

- Stop release or contain immediately.
- Notify: All Metals Emergency Coordinator
  - Primary: Todd Reed
  - Only emergency coordinator or GM should notify agencies
  - Any amount to, or likely to contact water: the Oregon Emergency Management Division and the National Response Center within 1 hour
  - Any release greater than 42 gallons to land: the Oregon Emergency Management Division within 1 hour. (Not spills to secondary containment or indoors with no potential to reach water)
- Clean up

Initial Response

IF IT CAN BE DONE SAFELY:

- Stop the discharge source
- If necessary, call emergency coordinator or alternate
- Notify shift supervisor
- Isolate spill

Contain the Release

IF IT CAN BE DONE SAFELY

- Small spills: apply absorbent
- Larger spills: construct earthen dikes
- Seal storm drains with spill mats
- If the discharge has or is likely to reach a waterway, call for the assistance.

Notify:

- State Emergency Management Division: immediately of release of any hazardous substance above the reportable quantity or of any amount that threatens human health or the environment.
- Local emergency responders immediately by calling 911 for spills of any amount that threaten public health or safety

Clean up

- Place oily absorbent in disposal containers
- Contact Clearwater Environmental Services for disposal

How do you affect Stormwater ?

- Leave drums of oil outside.
- Let a hose drip until tomorrow (it's still in secondary containment).
- Excavation or grading without proper erosion control.
- Cleaning equipment outside of designated areas.
- Skip sweeping (zinc, lead, copper, TSS)

APPENDIX D

PH FIELD CALIBRATION SHEETS

PH METER CALIBRATION AND PH MEASUREMENT RECORDS
Jackson & Son Oil

PH METER CALIBRATION RECORD
The pH meter must be calibrated prior to the collection of pH measurements in the field.
Calibration Expiration: Calibration Date and Time: _____ Calibration Solution 4.01 S.U. _____ Calibration Solution 7.00 S.U. _____ Calibration Solution 10.01 S.U. _____
Calibration Notes:

PH MEASUREMENT RECORD			
pH must be measured within 15 minutes of sample collection.			
Sampling Location	**pH (s.u.)**	Sample Collection Date and Time	pH Measurement Date and Time
Monitoring Location 001			
Monitoring Location 002			
Calibrated and Measured By:		Signature:	

APPENDIX E
PERMIT LETTER FROM DEQ

EXHIBIT CX 23
December 16, 2024, Spill Prevention, Containment, and Countermeasure (SPCC) Plan for Jackson & Son Oil Bulk Fuel Facility

November 2024

Spill Prevention, Containment, and Countermeasure (SPCC) Plan

Jackson & Son Oil Bulk Fuel Facility

Seaside, OR

Prepared by:
Aquarius Environmental, LLC
2117 NE Oregon St., Ste 502
Portland, OR 97232
503.828.0265
www.aquariusenv.com

Prepared for Site Operator/Owner:
Jackson & Son Oil
84721 Happel Lane
Seaside, OR 97138
Clatsop County

AQUARIUS environmental

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1 CERTIFICATION & APPROVAL OF SPCC PLAN

1.1 Licensed Professional Engineer Certification (40 CFR 112.3(d))

The undersigned Registered Professional Engineer is familiar with the requirements of Part 112 of Title 40 of the Code of Federal Regulations (40CFR112) and has inspected or supervised the inspection of the facility by appropriately qualified personnel. The undersigned Registered Professional Engineer attests that this Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards and the requirements of 40CFR112; that procedures for required inspections and testing have been established; and that this plan is adequate for the facility.

Aquarius Environmental, LLC
Daniel A. Scarpine, P.E.
Principal Engineer

1.2 Management Approval (40 CFR 112.7)

Jackson & Son Oil is committed to preventing discharges of oil to navigable waters and the environment, and to maintaining the highest standards of spill prevention control and countermeasures through the implementation and regular review and amendment of this Spill Prevention, Control, and Countermeasure (SPCC) Plan. This SPCC Plan has been prepared in accordance with good engineering practices and meets the requirements of 40 CFR 112: Oil Pollution Prevention.

Casey Jackson
Jackson & Son Oil

12/16/24
Date

2 FACILITY EMERGENCY RESPONSE TEAM CONTACTS 112.7(a)(3)(vi)

Table 1. Facility Emergency Response Team 24-hour Phone Numbers.

PRIMARY CONTACTS

NAME:	TITLE:	PHONE NUMBER:
CASEY JACKSON	OWNER	PII [redacted]

*All serious incidents resulting in hospitalization or actual disaster, should be communicated immediately to Casey **Jackson**.*

EMERGENCY/AGENCY RESPONSE NOTIFICATION CONTACTS

AGENCY:	PHONE NUMBER:
FIRE/RESCUE & POLICE DISPATCHER: Call for All Emergencies and Spill Notification	911
NATIONAL RESPONSE CENTER:	(800) 424-8802
OREGON EMERGENCY RESPONSE (OERS):	(800) 452-0311
CITY OF SEASIDE:	(503)-738-6311
AMBULANCE / AMR:	911

EMERGENCY RESPONSE CONTRACTORS

NRC ENVIRONMENTAL SERVICES	(800)-33-SPILL or (800)-337-7455)

3 SPCC PLAN PURPOSE & REQUIREMENTS (40 CFR 112.7(a)(1) & (2))

3.1 Purpose of SPCC Plan

This Spill Prevention, Control, and Countermeasure Plan (SPCC Plan) describes measures implemented by Jackson & Son Oil (JSO) to prevent, control, and respond to oil spills. The U.S. passed the Oil Pollution Prevention regulation 40 CFR Part 112 to prevent oil discharges to navigable waters and adjoining shorelines.

The purpose of this SPCC Plan is to prevent discharges of oil to navigable waters and the environment. This Facility maintains the highest standards for spill prevention, control, and countermeasures through regular review, updating, training, and implementation of this SPCC Plan.

3.2 Conformance and Compliance with Plan Requirements

This Plan complies with the provisions of 40 CFR Part 112. The Facility does not meet any of the substantial harm criteria per Checklist in Section 6, and therefore is not required to prepare a Facility Response Plan (FRP).

4 FACILITY DESCRIPTION (40 CFR 112.7(a)(3))

4.1 Facility Location, Area, & Basic Description

JSO (or Site) is located at 84721 Happel Lane in Seaside, Oregon, west of U.S. 101.

The Site area is ~2.0 acres and includes the Bulk Fuel Facility (1.4 acres) and the Retail Cardlock Facility (0.6 acres). Topography is mostly flat, covered by pavement, compacted gravel, pervious gravel, and vegetation. The Site is less than 50% impervious and includes a warehouse building (aka 'shop'), an office, a concrete truck loading rack, bulk fuel tanks in concrete secondary containment, and retail fueling.

See Figure 1 for SPCC General Location (Vicinity) Maps. See Figures 2 & 3 – SPCC Site Plan & Details – for impervious/pervious surface locations. See Section 5 for further description of Facility (or Site) Drainage.

4.2 Facility Operations

Facility operations are classified under Standard Industrial Classification (SIC) code 5171 – Petroleum Bulk Stations and Terminals. Bulk fuel facility operating hours are 7am to 5pm, Monday through Friday. Retail (Cardlock) fueling islands are open 24 hours a day, 7 days a week.

4.3 Oil & Petroleum-Based Storage and Controls

All contents in the Bulk Fuel Facility are petroleum-based and stored in steel above-ground storage tanks (ASTs) in the bulk tank area within secondary containment. Petroleum-based storage in the shop includes poly containers of oils (hydraulic, diesel, etc.), diesel exhaust fluid (DEF), oil containing buckets, and drums for wholesale. The shop currently deploys active containment inside the building with containment booms and absorbents.

All contents in the Retail Cardlock fueling area are contained via double-walled tank or secondary containment.

See the following subsection for the JSO petroleum-based product inventory.

4.3.1 Petroleum-Based Product Inventory (40 CFR 112.7(a)(3)(i))

See Table 2 for petroleum-based AST product inventory including contents, capacities, tank construction, and containment. See Table 3 for petroleum-based various container storage product inventory in the shop, including contents, capacities, and container type.

Table 2. Petroleum-based AST product inventory.

ID	Contents	Capacity (gal)	Location	Tank/Container Type
Bulk Fuel Facility				
1	Highway Diesel	20,000	Bulk Tank Area	Vertical Steel AST with concrete dike containment
2	Off-Road Diesel	20,000	Bulk Tank Area	Vertical Steel AST with concrete dike containment
3	Super Gasoline	20,000	Bulk Tank Area	Vertical Steel AST with concrete dike containment
4	Gasoline	20,000	Bulk Tank Area	Vertical Steel AST with concrete dike containment
Retail Cardlock Facility				
5	Super Gasoline	2,000	Retail Cardlock	Single-walled Steel AST with steel dike containment
6	Diesel	2,500	Retail Cardlock	Single-walled Steel AST with concrete dike containment
7	Gasoline	3,000	Retail Cardlock	Double-walled Steel AST
8	Diesel	15,000	Retail Cardlock	Double-walled Steel AST*

*15,000-gallon double-walled tank has two compartments – 9,000 gallons and 6,000 gallons.

Table 3. Petroleum-based container storage product inventory.

Location^	Contents	Container	Capacity (gal)	Approximate Total Stored (gal)*
Warehouse (Shop)	DEF	Poly	275	1000
Warehouse (Shop)	DEF	Poly	2.5	200
Warehouse (Shop)	DEF	Poly Drum	55	500
Warehouse (Shop)	Hydraulic Oil 46	Poly	275	500
Warehouse (Shop)	Hydraulic Oil 46	Plastic Bucket	5	100
Warehouse (Shop)	Hydraulic Oil 46	Steel Drum	55	100
Warehouse (Shop)	Diesel Engine Oil (SAE15W-40)	Poly	275	500
Warehouse (Shop)	15/40	Steel Drum	55	200
Warehouse (Shop)	15/40	Plastic Bucket	5	60
Warehouse (Shop)	Gear Oil	Plastic Bucket	5	25
Warehouse (Shop)	Bar Oil	Poly Tank	275	275
Warehouse (Shop)	Bar Oil	Steel Drum	55	55
Warehouse (Shop)	Bar Oil	Plastic Bucket	5	75

^Active containmnet is deployed in the Warehouse.
*Total quantities may vary.

5 SPILL PREVENTION, CONTROL & COUNTERMEASURES (40 CFR 112.7 & 112.8)

This section provides information relating to storage and handling oil and petroleum products, spill prevention & containment equipment, and response/countermeasures to be implemented to control the impact of a spill at the Site.

5.1 Discharge Prevention Measures (40 CFR 112.7(a)(3)(ii) & 112.8(c)(8))

Storage tanks and valves are inspected daily. The storage tanks are above ground and in full view of the operator. The main outlet valves of all storage tanks are locked shut except when product is being added or withdrawn. All valves and operating controls are locked when not in use. Routine security inspections consist of daily walkthrough when the facility is in operation.

All tanks in the bulk fuel area meet STI SP001 tank construction standards for above-ground use. Overfill prevention is monitored during filling. Tanks are properly vented and have an

inherent continuous release detection method (CROM) in the form of an impermeable concrete foundation. The operator ensures that the correct disconnection and valve closure procedures are followed.

5.2 Discharge and Drainage Controls (40 CFR 112.7(a)(3)(iii))

All secondary containment and diversionary structures are noted in association with the inventory in Tables 2 & 3 and are located/quantified in the SPCC Site Plan.

Emergency shut-off valves are in place.

A spill kit is in the Shop building. The equipment can be effectively used to control and clean a small spill of oil, hazardous material, or hazardous waste. After response action is complete, equipment and clean-up materials should be placed on a drip pad or in an empty drum or tote, labeled, and prepared for recovery or disposal in accordance with federal, state, and local regulations.

Secondary containment for larger spills is further described in the following subsections.

5.2.1 Conformance with SPCC Standards and Guidelines for Secondary Containment and Diversionary Structures (40 CFR 112.7 (c) and (d))

Secondary containment and diversionary structures are described in the following subsections and located on the SPCC Site Plan.

This facility meets the minimum requirements for diversionary structures and equipment to prevent discharged oil or hazardous substances from reaching navigable waters as required by 40 CFR 112.8 (c) by providing secondary containment or equivalent for all major tanks, process equipment, and mobile or portable oil storage containers. In the event of a discharge, JSO also uses other barriers and sorbent materials to prevent substances from reaching navigable waters.

5.2.2 Bulk Fuel Tank Area Secondary Containment

Secondary containment in the bulk fuel tank area consists of concrete dike containment containing all four (4) bulk fuel tanks ASTs. The approximately 1,675 square foot containment provides the capacity to hold the volume of the largest tank plus additional freeboard (see the following subsection). Containment wall is 3 feet tall with sealed pipe penetrations of the dike walls to the truck loading/unloading rack (TLUR). The concrete slab and retaining walls are impervious to contain discharge. Stormwater from the containment area is discharged manually via the dike drain valve in the northeast corner of the containment wall, after the stormwater has been visually inspected for oil sheen or other signs of contamination.

See Figure 3 for secondary containment delineation. See the following subsection for secondary containment capacity.

5.2.2.1 Bulk Fuel Tank Secondary Containment Capacity

Key containment capacity factors for the bulk fuel tank secondary containment include:

- Gross containment area = 1,675 sq (flat bottom)
- Gross containment depth = 3’
- Total gross containment volume = 37,590 gallons
- Footing + tank volume displacement = 6,673 gallons
- 25-year/24-hour rainfall (5”) = 4,423 gallons
- Total net containment volume = 26,494 gallons
- The largest tank in containment = 20,000 gallons.

See Table 4 for Bulk Fuel Tank secondary containment capacity. See Appendix D for Secondary Containment Capacity Calculations Worksheets.

Table 4. Bulk Fuel Tank secondary containment capacity.

Bulk Fuel Tank Farm Secondary Containment Capacity Calculation (gallons)	
Gross Volume	37,590
Minus Tanks + Footings Displacement[1]	-6,673
Minus 25-yr/24-hr storm (5"/24-hr)[2]	-4,423
Net Volume	**26,494**
Minus Largest Tank	**-20,000**
Excess Secondary Containment Capacity	**6,494**

1-4x footings + 3x tank displacement
2-Volume of 25-year, 24-hour rainfall event (5.0"/24-hr) derived from USGS rainfall data.

The bulk fueling tank area has appropriate and sufficient containment structures and equipment to prevent discharges of oil from reaching surface waters.

5.2.3 Warehouse Building (Shop) Secondary Containment

Secondary containment in the Shop consists of concrete floor with active containment including oil containment booms and absorbents. Forklifts are not used in the Warehouse. Containers are on pallets and are only moved with a hand pallet jack. Thus, the most probable container to be spilled is a 55-gallon drum (i.e., 275-gallon totes are not likely to puncture or spill). Active containment with the spill kit inside the Shop can contain 110% of the largest tank (275-gallon poly tote).

See Section 5.13 for Future Improvements.

5.2.4 Retail Cardlock Secondary Containment

Secondary containment in the Retail Cardlock fuel area consists of:

- Steel dike containment for 2,000-gallon single-walled steel gasoline AST (Tank 5).
- Concrete dike containment for 2,500-gallon single-walled steel diesel AST (Tank 6)
- Double-walled steel AST for 3,000-gallon gasoline (Tank 7)
- Double-walled steel AST for 15,000-gallon diesel with two compartments – 5,000 gallons and 10,000 gallons (Tank 8)

5.2.4.1 Retail Cardlock (Tank5) Concrete Dike Secondary Containment Capacity

Tank 5, 2,000-gallon Super Gasoline is a single wall AST with welded steel dike containment. Per the 2023 STI SP001 external tank inspection (Powers, 2023), the covered steel dike capacity of approximately 2,500 gallons.

5.2.4.2 Retail Cardlock (Tank 6) Concrete Dike Secondary Containment Capacity

Key containment capacity factors for Tank 6, 2,500-gallon diesel secondary containment in the Retail Cardlock include:

- Gross containment area = 237.6 sq (flat bottom)
- Gross containment depth = 3'
- Total gross containment volume = 5,332 gallons
- 25-year/24-hour rainfall (5") = 741 gallons
- Total net containment volume = 4,591 gallons
- The largest tank in containment = 2,500 gallons.

See Table 5 for Tank 6 (Retail Cardlock) secondary containment capacity. See Appendix D for Secondary Containment Capacity Calculations Worksheets.

Table 5. Tank 6 (Retail Cardlock) secondary containment capacity.

Tank 6 (Retail Cardlock) Secondary Containment Capacity Calculation (gallons)	
Gross Volume	5,332
Minus 25-yr/24-hr storm (5"/24-hr)	-741
Net Volume	**4,591**
Minus Largest Tank	**2,500**
Excess Secondary Containment Capacity	**2,091**

5.2.5 Loading/Unloading (40 CFR 112.7(h)) (40 CFR 112.8(d))

5.2.5.1 Bulk Fuel Truck Loading/Unloading Rack (TLUR)

East of the bulk fuel tank containment, the truck loading/unloading rack (TLUR) is on a concrete pad graded to drain to the central low point catch basin with a 100-gallon sump. The area around the TLUR is generally flat and covered by compacted gravel, which is then surrounded on the site perimeter by pervious gravel and vegetation.

Secondary containment is provided for the TLUR area. The 100-gallon catch basin sump is gravity-piped to an adjacent underground 1,500-gallon poly tank equipped with an isolation valve between the sump and poly tank for a total containment capacity in the TLUR area of 1,600 gallons. The largest single compartment of any truck using the transfer area is 1,400 gallons. The valve is closed during all transfer operations. Spilled fuel (and potential rainwater) would be contained in the catch basin sump, poly tank, and gravity piping, which will be pumped out as needed.

5.2.5.2 Retail Cardlock AST Loading

For AST Loading in the Retail Cardlock area, the truck will be parked on a concrete pad, with a catch basin (CB) to the SD system. The CB grate is covered with a rubber mat during filling operations. The AST fill port and hose nozzle is equipped with a 15-gallon spill box. Active containment is available in the event of larger spill or rupture during fueling. The operator will be able to shut off the fuel line and use a spill kit to address any spill in the surrounding area, which is gravel and does not drain to the CB.

5.3 Countermeasures for Discharge Discovery, Response, & Cleanup 112.7(a)(3)(iv)

JSO personnel are responsible for keeping an accurate and factual log of the spill, should one occur. All technical inquiries will go to Casey Jackson. All requests for information from the public or the media will be referred to Casey Jackson to prevent the reporting of inaccurate information.

5.3.1 EMERGENCY SPILL RESPONSE (Discharge/Spill Discovery)

IF THERE ARE INJURIES, AN EXPLOSION, OR FIRE:
CALL 911 IMMEDIATELY

A. Notification of a reportable incident.
A Reportable Spill is
Any quantity of oil discharged offsite to water of the State or the US
42 gallons or more on land.

a. Notify Casey Jackson that a reportable spill has occurred to determine the reportability of a spill incident.
b. Casey Jackson will immediately notify applicable reporting agencies (see Table 4 for reporting agencies) with one of the following messages:
   i. A spill has occurred.
   ii. A spill has occurred, although it has not been determined that JSO was at fault.
   iii. A spill has not been verified, but information indicates that a spill is imminent.

B. Assess the extent of the spill.
a. Gather an accurate determination and evaluation of the spill.
b. Obtain as much of the following information as possible:
   i. Verify that a spill has occurred in the vicinity of the facility
   ii. Determine whether the spill came from JSO
   iii. Estimate the size of the spill
   iv. Log extent of the spilled material onto public or private property not owned or managed by JSO.
   v. Log weather conditions
   vi. Log wind direction
   vii. Log direction of spill movement
   viii. Log any other pertinent information, such as type of oil spilled.

C. Spill Response – Containment and Clean Up
a. See the following subsection for Spill Response & Cleanup Procedures

A spill kit (SK) is available in loading and unloading areas. In the event of an oil spill, spill response mats will be placed over any outlet basin that can potentially release spilled material into the stormwater system or US navigable waterway.

If a spill becomes unmitigable or beyond the capability of on-site personnel to address (due to size of the spill or movement of the material), management and/or supervisors are to initiate Emergency Oil Response Procedures. Contract vendors and emergency services personnel are more well equipped and trained to address large or complex spills.

5.3.2 Discharge (Spill) Response (112.7(a)(5)) & Cleanup Procedures

In the event of an oil spill, Casey Jackson will assess the magnitude and nature of the spill and, when appropriate, take the necessary actions of notifying all interested parties, including affected employees, emergency services, Local/State/Federal agencies, and environmental response contractors.

Contact one of the following to conduct any necessary, emergency-scale spill response. See Table 6 for complete list of Emergency Spill Contacts.

NATIONAL RESPONSE CORPORATION (NRC)
(800)-33-SPILL or (800)-337-7455

Table 6. EMERGENCY SPILL RESPONSE CONTACT LIST.

EMERGENCY SPILL CONTACTS	Phone
Casey Jackson Owner/Operator	PII [redacted]
EMERGENCY SPILL RESPONSE CONTACT LIST	**Phone**
FIRE & RESCUE	**911**
POLICE	**911**
AMBULANCE/AMR	**911**
National Response Center	**800-424-8802**
Oregon Emergency Response System (Spill Notification)	**800-452-0311**
AGENCIES (REPORTING)	**Phone**
Oregon DEQ – Northwest Office	**503-229-5263 or 800-452-4011**
EPA Region 10	**866-EPASPILL (866-372-7745) or 503-326-3250**

See the following points for Spill Response procedures. In the event of a spill or leak, the following actions will be taken, in order:

1. **SAFE** - Determine if the site and spill area are safe to occupy. If not, retreat to a safe area.
2. **WARN** personnel. Enforce safety and security measures.
3. **SOURCE** - Determine the source of leak or spill; immediately identify the character, exact source, amount and area affected by the release.
4. **HAZARDS** - evaluate the hazards of the release with the type, amount, and location of the spill.
5. **DETERMINE** under what conditions the spill area is safe to enter. Determine appropriate Personal Protective Equipment (PPE), including gloves, boots, disposable suits, goggles, respirator, or Self-Contained Breathing Apparatus (SCBA).
6. **IGNITION** - Eliminate and continue to restrict all sources of ignition from spill area, and areas downwind of the spill area.
7. **STOP** - If safe, remedy and stop the source of the spill wherever and whenever possible.
8. **CONTAIN** - Dike or contain the spill if possible. This can be done through:
    a. Using booms and sand for hasty construction of berms around the spill
    b. Covering catch basins with temporary covers
    c. Using booms and sand to barricade around catch basins
    d. Using booms to contain spills on surface waters as appropriate.
    e. If required, call Emergency cleanup contractor.

9. **ABSORB** - Once flow is stopped, absorb the spilled material from pavement or ground with absorbent pads, booms, and/or absorbent granular material. Use shovel to uniformly disperse absorbent over the affected area.
10. **INFORMATION** - Determine as much information as possible about the chemical or material spilled from shipping papers, MSDS forms, etc.
11. **COLLECT** the contaminated material (i.e., absorbent rags, etc.) and place it in 55-gallon drums or other approved storage containers.
12. **RECOVER** - Use portable pumps or other equipment as needed to recover spilled material or to transfer material to a compatible storage container.
13. **DECONTAMINATE** all PPE, including boots, gloves, respiratory equipment, before leaving the site.
14. **CLEAN**, restore, or replace spill response equipment and used spill kits, and return them to their original location.

Section 5.5 for Discharge (Spill) Reporting Procedures.

5.4 Disposal Methods for Recovered Materials 112.7(a)(3)(v)

Once the cleanup is complete:

1. Seal and store the drum in a safe, secure location such that the public does not become exposed—away from air conditioning intake points and lanes of traffic. Keep spilled flammable materials away from sources of ignition.
2. If any of the spilled material or cleanup material is of a hazardous nature, when the drum is full – prior to 90 days – JSO personnel is to call the site's waste management service provider to remove the drum to be finally managed offsite at a permitted treatment, storage, and disposal (TSD) facility.

5.5 Discharge (Spill) Reporting Procedures (40 CFR 112.7(a)(4))

5.5.1 Initial Spill Notification Procedures

When a reportable spill reaches a storm drain, an immediate 15-minute notification must be made to the following. See Table 6 for contact information. See Appendix B for Spill Report Forms.

- Oregon Emergency Response System (OERS)
- National Response Center (NRC) – This is NOT the same NRC as the vendor of the same name)
- Casey Jackson

5.5.2 Spill Notification & Contacts

Within 7 days, give a written notification to the following agencies for all reportable spills*:

State of Oregon Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97294

United States Environmental Protection Agency – Region 10
1200 6th Avenue
Seattle, WA 98101

State of Oregon Water Resources Department
158 NE 12th Street
Salem, OR 97301-4172

The written report should include the following:

a. Any event identification number received when verbal report was made
b. Name, address, and telephone number of owner or operator
c. Name, address, and telephone number of facility
d. Date, time, and type of incident
e. Name and quantity of material involved
f. Extcnt of injurics if any
g. Assessment of actual or potential hazards to human health or environment, where applicable
h. Estimated quantity of treated, stored, or dispose of recovered material that resulted from the incident

*Written reporting is not typically required if there is reasonable belief that the discharge poses no significant threat or potential hazard to human health/safety, property, and the environment.

5.5.3 EPA Additional Reporting Requirements (40 CFR 112.4)

A report must be submitted to the EPA Regional Administrator and the appropriate State agency within 60 days if either of the following occurs:

- 1,000 gallons of oil or more discharges into or upon the navigable waters (including wetlands and storm sewer systems) of the United States or adjoining shorelines in a single discharge event.
- Two discharges, each of greater than 42 gallons of oil into or upon the navigable waters of the United States or adjoining shorelines, occur within any 12-month period.

The report will be sent to the following agencies:

United States Environmental Protection Agency – Region 10
1200 6th Avenue
Seattle, WA 98101

Oregon Department of Environmental Quality - Environmental Cleanup
Call 541-686-7838 for instructions on reporting requirements.

The following information will be included in the report:

- Facility name and location
- Facility owner or operator names
- Maximum storage or handling capacity of the facility and normal daily throughput
- Facility description including maps, flow diagrams, and topographical maps, as necessary
- The cause(s) of the spill
- Failure analysis of system or subsystem where the failure occurred
- Corrective actions and/or countermeasures taken (e.g., equipment repaired or replaced)
- Additional preventive measures taken to minimize the possibility of recurrence
- Other information the Regional Administrator may reasonably require pertinent to the discharge or the SPCC Plan

If required by the Regional Administrator, this SPCC Plan will be amended in accordance with 40 CFR 112.4.

5.6 Prediction of Direction, Rate of Flow and Total Quantity Discharged from Each Type of Major Equipment Failure (40 CFR 112.7(b))

This section presents a prediction of direction, rate of flow, and potential quantity of discharge from each possible type of major equipment failure. A summary of each scenario is indicated in Table 7.

If there were a catastrophic failure of one of the 20,000-gallon tanks (Tanks 1 – 4) in the bulk fuel area, the contents would spill into the secondary containment surrounded by concrete dike walls. Accounting for the displacement of the intact tanks, the containment capacity of this area is 26,494 gallons. Fuel contents would remain in the containment area and would not flow into storm sewers or navigable waters of the US or State of Oregon.

If there were a catastrophic failure at the TLUR, fuel contents of the single largest compartment of a facility fuel truck could spill up to 1,400 gallons onto the concrete transfer pad which collects at a low point catch basin with a 100-gallon sump. This sump is gravity-piped to an adjacent underground 1,500-gallon poly tank equipped with an isolation valve between the sump and poly tank for a total containment capacity in the TLUR area of 1,600 gallons. The valve is closed during all transfer operations. Spilled fuel (and potential rainwater) would be contained in the catch basin sump, poly tank, and gravity piping, which will be pumped out as needed. Fuel contents would remain in the containment area and would not flow into storm sewers or navigable waters of the US or State of Oregon.

If there were a catastrophic failure of the 2,000-gallon gasoline AST (Tank 5) in the Retail Cardlock, the contents would spill into a covered steel dike secondary containment designed for this tank to contain approximately 2,500 gallons. Fuel contents would remain in the containment area and would not flow into storm sewers or navigable waters of the US or State of Oregon.

If there were a catastrophic failure of the 2,500-gallon diesel AST (Tank 6) in the Retail Cardlock, the contents would spill into the secondary containment surrounded by concrete dike walls. The net containment capacity of this area is 4,591 gallons. Fuel contents would remain in the containment area and would not flow into storm sewers or navigable waters of the US or State of Oregon.

The 3,000-gallon gasoline AST (Tank 7) and the two-compartment 15,000-gallon diesel AST (Tank 8) in the Retail Cardlock are double walled tanks and would not flow into storm sewers or navigable waters of the US or State of Oregon.

The most likely spill scenario for bulk transfers in the Retail Cardlock area would be a rupture at a connecting hose. Assuming a transfer rate of 150 gallons per minute, available deadman shut off, and a reaction time of 15 seconds to shut down transfer pumps, the discharge volume could be approximately 38 gallons, to be actively contained by the driver and a JSO employee that is trained in spill response.

If there were a catastrophic failure of a container drum in the shop, contents of the most probable container to spill would be collected inside the building (i.e., 55-gallon drum). No forklifts are used inside the shop. All containers are on pallets and moved with a hand pallet jack. Contents would remain in the building and would not flow into storm sewers or navigable waters of the US or State of Oregon.

Table 7. Prediction of direction, flow, and quantity of potential spills.

Tank ID	Contents	Predicted Maximum Spill Volume (gal)	Maximum Discharge Rate (gal/min)	Containment / Spill Control Methodology
Bulk Fuel Facility				
1-4	Gasoline or Diesel	20,000	Gradual to Instantaneous	Concrete stationary secondary containment
TLUR				
n/a	Gasoline or Diesel	1,400	250	1,500-gallon poly tank and 100-gallon sump
Retail Cardlock Facility				
5	Gasoline	2,000	Gradual to Instantaneous	Covered stationary steel dike secondary containment
6	Diesel	2,500		Concrete stationary secondary containment
7	Gasoline	3,000		Double-walled tank
8	Diesel	9,000[A]		Two-compartment double-walled tank
Retail Cardlock AST Tank Filling				
5-8	Gasoline or Diesel	38	150	Active Containment with booms and sorbents
Retail Cardlock – Retail Vehicle Fueling Operations				
n/a	Gasoline or Diesel	<10	10	Active Containment with booms and sorbents
Warehouse Storage Area				
n/a	Misc. Petroleum Products	55	10	Active Containment with booms and sorbents

A – Two-compartment tank. Largest compartment = 9,000 gallons.

5.7 Inspections, Testing, and Records (40 CFR 112.7(e), 112.8(c)(6))

Maintenance personnel and/or tank farm operators are responsible for daily visual inspections of all ASTs, foundations, piping, and secondary containment. Maintenance personnel are also responsible for the routine inspection of all process equipment conducted and documented. Equipment is regularly inspected for signs of corrosion and deterioration due to weathering and usage.

All ASTs are inspected per the following Tank Inspection Schedules (summarized in Table 8) and documented using Steel Tank Institute (STI) SP001 forms. Leaks, releases, and the condition of the oil, if applicable, are included in the inspections. All deficiencies are recorded and corrected. The inspection checklist is completed by maintenance personnel and/or tank farm operators and is kept on file at the facility for at least three years.

- Periodic Monthly and Annual AST inspections (P) are to be conducted by the owner/operator.
- An External in-service inspection (E) should be scheduled no more than 20 years from the current inspection date or sooner if a change in tank condition occurs. However, more stringent governing regulatory intervals of inspection may supersede this interval.

See Appendix C for blank and STI SP001 inspection forms. See Appendix C for completed 20-year inspection forms

Table 8. Bulk fuel tank inspection schedules.

Tank ID	Tank Capacity (gal)	Tank Category	Inspection Type	Next Formal Inspection
Tanks 1 through 4	20,000 (each)	**Category 1**	P, E (20)	2043
Tank 5	2,000	**Category 1**	P, E (20)	2043
Tank 6	2,500	**Category 1**	P, E (20)	2043
Tank 7	3,000	**Category 1**	P, E (20)	2043
Tank 8	15,000	**Category 1**	P, E (20)	2043

Category 1 - ASTs with spill control and continuous release detection method (CRDM)
P – Periodic AST inspection by owner's inspector.
E – Formal External Inspection by Certified Inspector.
*E(20) inspection required per 2023 inspection (Powers).
(#) = Maximum inspection interval in years (i.e., 20 years).

5.7.1 Aboveground Container Integrity Testing (40 CFR 112.8(c)(6))

See the following from 40 CFR 112.8 (c)(6):

> ***From 112.8(c)(6): Test or inspect each aboveground container for integrity on a regular schedule and whenever you make material repairs.*** *You must determine, in accordance with industry standards, the appropriate qualifications for personnel performing tests and inspections, the frequency and type of testing and inspections, which take into account container size, configuration, and design (such as containers that are: shop-built, field-erected, skid-mounted, elevated, equipped with a liner, double-walled, or partially buried).* ***Examples of these integrity tests include****, but are not limited to:* ***visual inspection****, hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing, or other systems of non-destructive testing. You must keep comparison records and you must also inspect the container's supports and foundations. In addition, you must frequently inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. Records of inspections and tests kept under usual and customary business practices satisfy the recordkeeping requirements of this paragraph.*

5.8 Personnel, Training, and Discharge Prevention Procedures (40 CFR 112.7(f)

All personnel are trained in Spill Prevention, Reporting, and Mitigation annually. Training includes spill prevention, response procedures, clean up procedures (applicable employees), and proper equipment storage.

All training is documented by a signature on a training sign-off sheet. All trainees are made aware of what constitutes a release requiring governmental attention, who to contact in the event of an unmitigable spill, and/or who to contact if they have any questions or concerns regarding a spill.

The following topics are covered (minimum):

- Contents of this SPCC Plan
- Operation and maintenance of equipment to prevent discharges
- Standard operating procedures to prevent discharge
- Applicable pollution control laws, rules, and regulations

- General Facility operations
- Spill identification, notification, containment, control, and clean-up procedures and techniques
- Location of the Spill Kit (SK)
- Known discharges, failures, or malfunctioning components
- Recently developed precautionary measures

5.8.1 Employee Training Frequency

Training frequency:

- No later than 30 calendar days of hiring.
- No later than 30 calendar days of change in duties for key SPCC personnel.
- Annually thereafter for all SPCC-responsible personnel.

5.8.2 Employee Training Documentation

Employee training logs are retained onsite with this SPCC Plan for a minimum of three (3) years in Appendix A.

5.9 Security (40 CFR 112.7(g))

The JSO Site is enclosed by chain link fencing and secure gates. Gates are locked when facility is unattended. Overhead lights illuminate the entire facility including AST areas, all buildings, and the TLUR area. Daily security walkthroughs are performed during days of operation. The main outlet valves of all storage tanks are locked shut, except when product is being added or withdrawn.

5.10 Brittle Fracture or Other Catastrophe Evaluation (40 CFR 112.7(i))

This SPCC requirement is not applicable to the site. No field-constructed above-ground storage tanks (AST) are present at the facility.

5.11 Facility Drainage (40 CFR 112.8 (b))

Site drainage consists of two (2) drainage areas (see Figure 2). Drainage Area 1 (DA-1) is approximately 1.4 acres and includes all surface and roof drainage. DA-1 is generally flat containing the Bulk Fueling Facility and TLUR areas covered with compacted gravel or pervious gravel (expect for containment and TLUR pad). Site stormwater infiltrates to surrounding pervious gavel and vegetation.

Drainage Area 2 (DA-2) includes the Retail Cardlock facility. The stormwater drainage (SD) system includes three catch basins (CBs) and underground gravity pipes to Discharge Point 002.

See Figures 2 & 3 for SD system and drainage area delineation.

5.11.1 Groundwater Contamination Incident

Groundwater contamination occurs when an impairing material seeps through pervious earth down into the water table. It is typically the result of a release that is not completely contained in a secondary containment system, or when a secondary containment system is cracked, damaged, leaking, etc., in any way.

1. In the event of suspected groundwater contamination, immediately report it to a supervising manager.
2. Attempt to mitigate the release in any manner that can be accomplished safely.

   a. Isolate and restrict work activities in the affected area to reduce the possibility of further contamination.
   b. Utilize absorbent, pads, booms, and shovels to prevent all further migration of the impairment.
   c. Dig out all impaired area, place waste soil material in a drum.
3. Supervision will notify Casey Jackson of the potential for groundwater impairment loading.
4. Conduct a preliminary site assessment to determine the nature and extent of the release.
5. If contamination or the potential for contamination is found, a more detailed environmental investigation must be conducted, and the appropriate steps be taken to notify the local and/or state health department.
6. If possible, the investigation team should perform the following activities:
   a. Identify hazardous materials involved so that appropriate corrective action can be taken.
   b. Remove any sources of ignition in the general area if they have the potential to create a fire or explosion hazard.
   c. Prevent the spread of materials.
7. Refer to the notification portion of this document.

5.12 Conformance with State of Oregon Regulations (40 CFR 112.7(j))

JSO will conform with more stringent discharge prevention and containment procedures required by the State of Oregon, should those requirements be adopted by the state. In the event of a release that threatens human health or the environment, the State of Oregon requires the release to be reported to the Oregon Emergency Response 24-Hour Emergency Line.

5.13 Future Improvements

There are no Future Improvements planned at this time.

6 APPLICABILITY OF THE SUBSTANTIAL HARM CRITERIA

ATTACHMENT C-II of 40 CFR 112.20e

1. Does the facility transfer oil over water to or from vessels and does the facility have a total oil storage capacity greater than or equal to 42,000 gallons?

Yes _____ No X

2. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and does the facility lack secondary containment that is sufficiently large to contain the capacity of the largest above-ground oil storage tank plus sufficient freeboard to allow for precipitation within any above-ground storage tank area? Yes _____ No X

3. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and is the facility located a distance (as calculated using the appropriate formula in Attachment C-III to this [appendix] or a comparable formula) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments? For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's "Guidance for Facility and Vessel Response plans: Fish and Wildlife and Sensitive Environments" (See Appendix E to this part, section 10, for availability) and the applicable Area Contingency Plan.

Yes _____ No X

4. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and is the facility located a distance (as calculated using the appropriate formula in Attachment C-III to this appendix or a comparable formula) such that a discharge from the facility would shut down a public drinking water intake? Yes _____ No X

5. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and has the facility experienced a reportable oil spill in an amount greater than or equal to 10,000 gallons within the last 5 years? Yes _____ No X

Certification

I certify that I have personally examined and am familiar with the information submitted in this document, and that based on my inquiry of those individuals responsible for obtaining this information, I believe that the submitted information is true, accurate, and complete.

Name & Title: Casey Jackson - Owner

Date: 12/16/22

Signature: Casey Jackson

7 SPCC PLAN AMENDMENT AND REVIEW

(40 CFR 112.4 and 112.5 (a))

This SPCC Plan shall be reviewed and, if necessary, amended if changes occur in the Facility's design, construction, operation, or maintenance that materially affect the potential for the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines (Ref. 40 CFR Part 112.4 and 112.5).

This SPCC Plan must be kept up to date. Major amendments to the SPCC Plan meeting one or more of the above criteria shall be reviewed and certified by a Licensed Professional Engineer. Minor amendments such as changing names of Facility personnel, phone numbers, or lists of oil spill response contractors will not require certification by a professional engineer. Each major amendment of this SPCC Plan shall also result in a complete review and evaluation of the Plan. The Plan amendment must be implemented as soon as possible, but no later than six months following preparation of any amendment, unless an extension (40 CFR 112.3(f)) has been requested and granted.

A complete review and evaluation of this SPCC Plan shall be performed at least once every five (5) years from the most recent certification date.

SPCC Plan Review & Amendment Logs are included in Appendix A. A copy of this Plan is to be maintained in the Facility Office.

8 Limitations

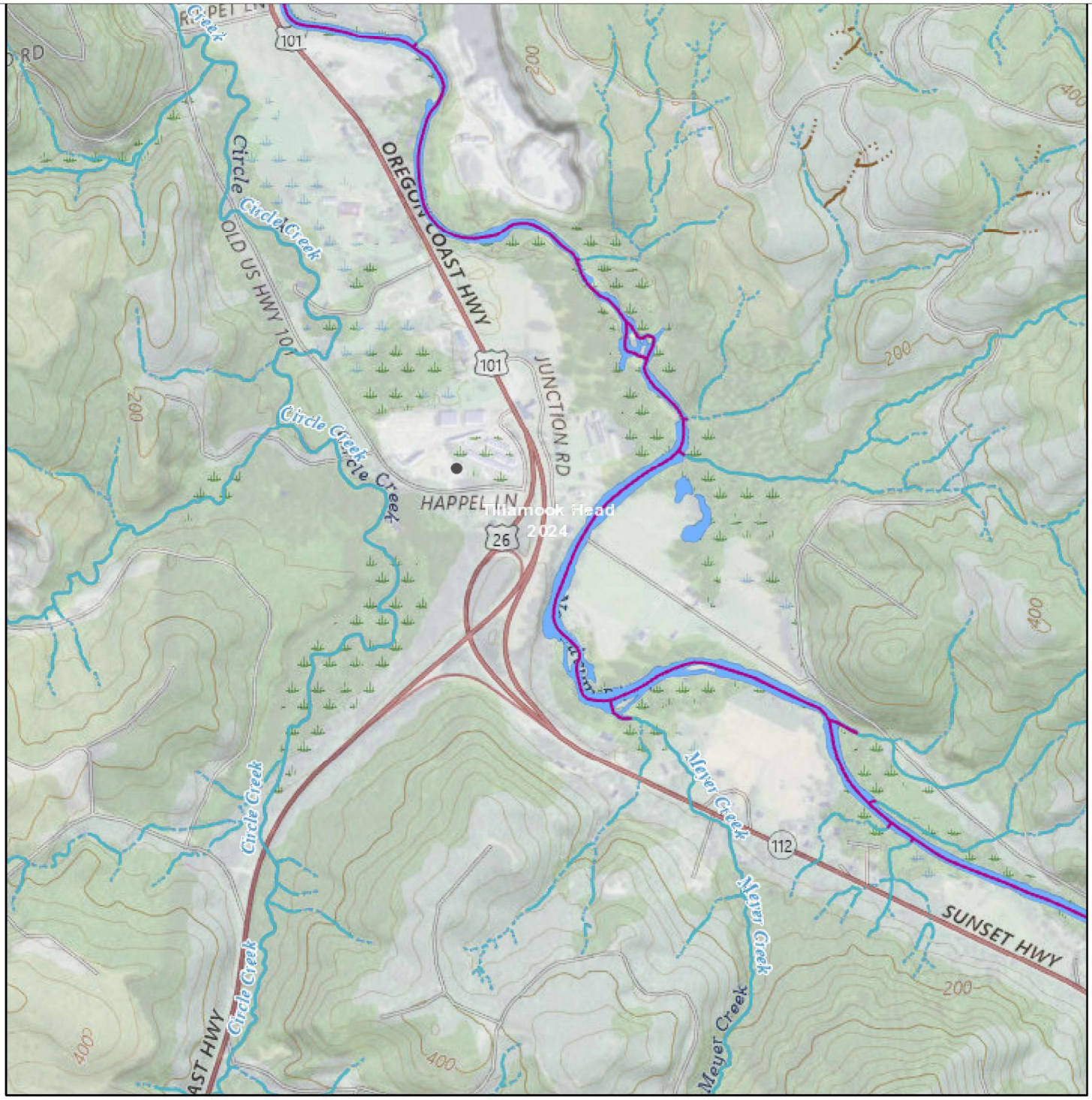
This report was prepared using several information sources, physical observations, and personnel interviews. While these sources are deemed reliable, no warranty as to the accuracy of this information, expressed or implied, is made.

9 Cross Reference to 40 CFR Part 112 Requirements

Table 9. Cross Reference to 40 CFR Part 112 Requirements.

Section in 40 CFR 112	Description of Required Information	SPCC Plan Section
112.3	Certification of SPCC by Licensed Professional Engineer	Section 1.1
112.4	SPCC Plan Amendment by Regional Administrator and Spill Reporting Requirements	Sections 5.7 & 7
112.5 (a)	SPCC Plan Amendment by owner/operator	Section 7
112.5 (b)	Five-year Plan review	Section 7
112.7 – General Requirements for SPCC Plans		
112.7 (a)(1)	Discussion of facility's conformance with Part 112	Section 3.2
112.7 (a)(2)	Compliance with applicable portions of Part 112	Section 3.2
112.7 (a)(3)	Description of Physical Layout and Facility Diagram	Section 4, Figure 2
112.7(a)(3)(i)	Type of oil in each container and its storage capacity	Section 4.3.1, Table 2
112.7(a)(3)(ii)	Discharge prevention measures	Section 5.1
112.7(a)(3)(iii)	Discharge and drainage controls	Section 5.2
112.7(a)(3)(iv)	Countermeasures for discharge discovery, response, and cleanup	Section 5.3
112.7(a)(3)(v)	Disposal methods for recovered materials	Section 5.4
112.7(a)(3)(vi)	Contact list and phone numbers	Section 2, Table 1
112.7(a)(4)	Discharge reporting procedures	Section 5.5
112.7(a)(5)	Discharge response procedures	Section 5.3
112.7(b)	Prediction of direction, rate of flow and total quantity discharged from each type of major equipment failure	Section 5.6
112.7(c)	Description of secondary containment and/or diversionary structures	Section 4.3
112.7(d)	Explanation why secondary containment structures are not practicable	Not Applicable
112.7(d)(1)	Oil Spill Contingency Plan per 40 CFR Part 109	Not Applicable
112.7(d)(2)	Written commitment of manpower, equipment, and materials for response to discharge	Section 1.2
112.7(e)	Inspections, tests and records	Section 5.7, Appendix C
112.7(f)	Personnel, training and discharge prevention procedures	Section 5.8
112.7(g)	Security	Section 5.9
112.7(h)	Facility tank truck load/unload rack	Section 5.10
112.7(i)	Brittle fracture failure analysis	Section 5.11
112.7(j)	Discussion of conformance with applicable State standards	Section 5.12
112.8 – SPCC Plan Requirements for Onshore Facilities (excluding production facilities)		
112.8(a)	Meet requirements of 112.7	See above
112.8(b)	Facility Drainage	Section 5.13
112.8 (c) – Bulk Storage Containers		
112.8(c)(1)	Bulk storage containers – compatibility with materials in storage	Section 4.3
112.8(c)(2)	Bulk storage containers - secondary containment	Section 5.2
112.8(c)(3)	Bulk storage containers – drainage of Stormwater from secondary containment areas	Section 5.2
112.8(c)(4)	Completely buried tanks – corrosion protection and leak testing	Not Applicable
112.8(c)(5)	Partially buried tanks – corrosion protection	Not Applicable

Section in 40 CFR 112	Description of Required Information	SPCC Plan Section
112.8(c)(6)	Above-ground containers – integrity testing	Section 5.7
112.8(c)(7)	Internal heating coil leakage – steam return or exhaust lines	Not Applicable
112.8(c)(8)	Container liquid level sensing devices – overfill protection	Not Applicable
112.8(c)(9)	Effluent treatment facilities – observation	Section 5.2.2
112.8(c)(10)	Correction of visible discharges	Section 5
112.8(c)(11)	Mobile or portable oil storage containers – positioning to prevent discharge and secondary containment	Not Applicable
112.8(d) – Facility Transfer Operations, Pumping, and Facility Process		
112.8(d)(1)	Corrosion protection for buried piping	Not Applicable
112.8(d)(2)	Proper handling of terminal connection at transfer point	Section 5.14
112.8(d)(3)	Pipe supports	Section 5.14
112.8(d)(4)	Inspection and testing of above-ground piping, valves and appurtenances	Section 5.14
112.8(d)(5)	Warning to protect above-ground piping or oil transfer operations from vehicular traffic	Section 5.14
112.9 to 112.19 – SPCC Rules for Other Types of Facilities		Not Applicable
112.20	Certification of the Applicability of the Substantial Harm Criteria	Section 6



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1:18,056

0 500 1,000 2,000 ft

0 175 350 700 m

7.5 Minute Labels

7.5 Minute Index

Waterbody - Large Scale

Lake Pond

Area - Large Scale

StreamRiver

Flowline - Large Scale

Perennial

Intermittent

Ephemeral

Artificial Path

Wetlands

Forest/shrub Wetlands

Emergent Wetlands

Inland Waters

Imagery (NAIP Plus)

Red: Band_1

Green: Band_2

Blue: Band_3

USGS TNM – National Structures Dataset. Data Refreshed July, 2024., USGS, USDA, The National Map: Orthoimagery. September 12, 2024., USGS TNM – National Hydrography Dataset. Data Refreshed July, 2024., USGS The National Map: Geographic Names Information System. Data Refreshed July, 2024., U.S. Fish and Wildlife Service, USGS TNM – US

MAP PROVIDED BY USGS NATIONAL MAP VIEWER.
HTTPS://APPS.NATIONALMAP.GOV/VIEWER/

USGS
2021 USGS

FIGURE 1

PROJECT NO. 0416

REVISIONS		
Rev	Date	Description

JACKSON & SON OIL

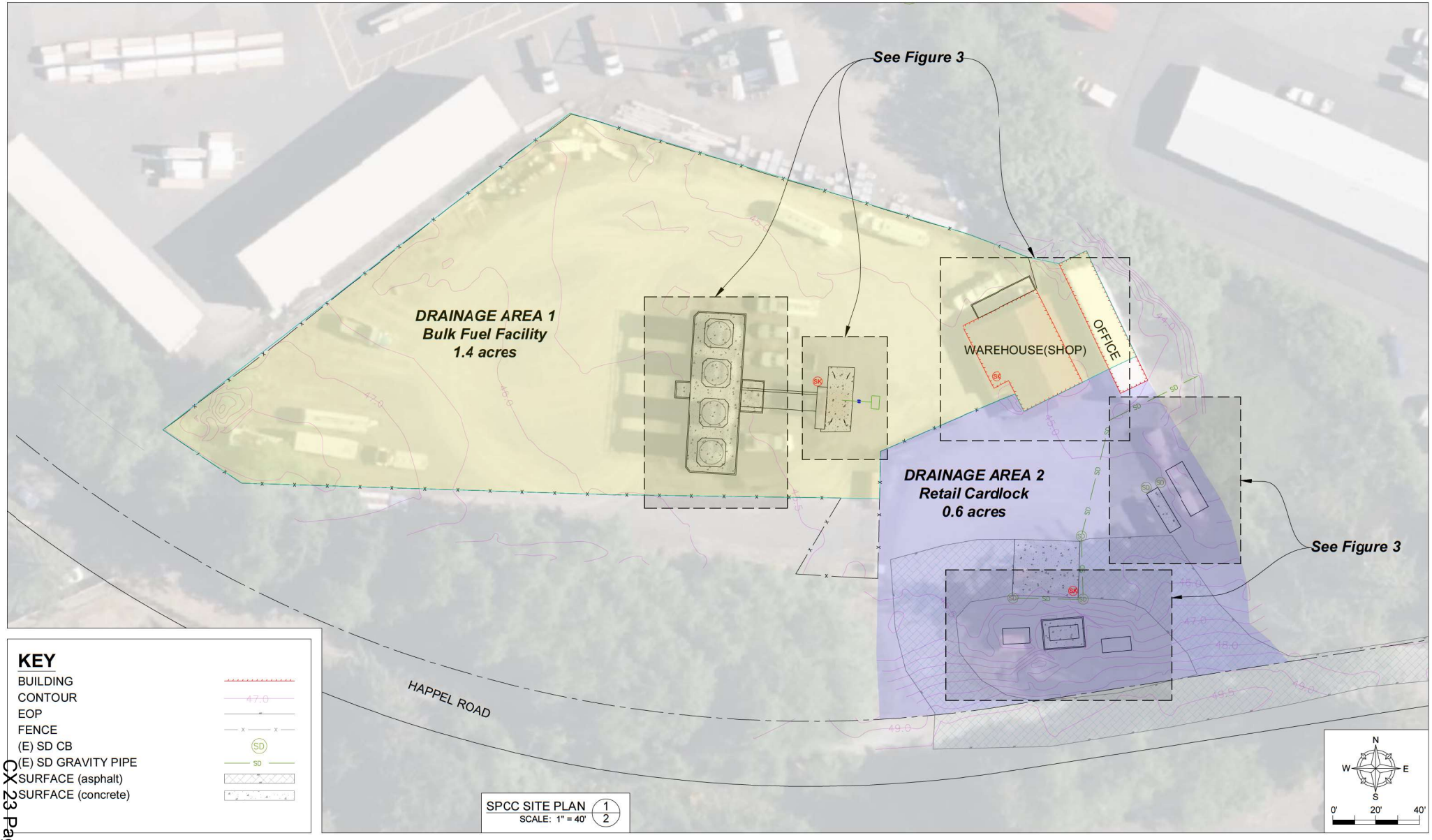
84721 HAPPEL LANE, SEASIDE, OR 97138

GENERAL LOCATION (VICINITY) MAPS

Designed: N/A
Drawn: KK
Checked: DS
Date: 11/26/24
Scale: AS NOTED

AQUARIUS environmental
www.aquariusenv.com

File: Jackson SPCC_112624.dwg



GENERAL NOTES & DISCLAIMER

1. PROPERTY LINE(S) AND SURFACE DRAINAGE FEATURES ARE BASED ON LIMITED SCOPE SURVEY AND MAPS PROVIDED BY JSO.
2. AQUARIUS ENVIRONMENTAL CLAIMS NO RESPONSIBILITY FOR INACCURACIES THAT MAY BECOME APPARENT IN THE FUTURE. WHILE THIS INFORMATION IS DEEMED RELIABLE, NO GUARANTEE OF THE ACCURACY OF THIS INFORMATION IS MADE.

REV.	DATE	DESCRIPTION	DWN BY	DES BY	CHK BY	APP BY

DATE OF ISSUE 11/26/24 | DWN BY KRK | DES BY DS | CHK BY | APP BY

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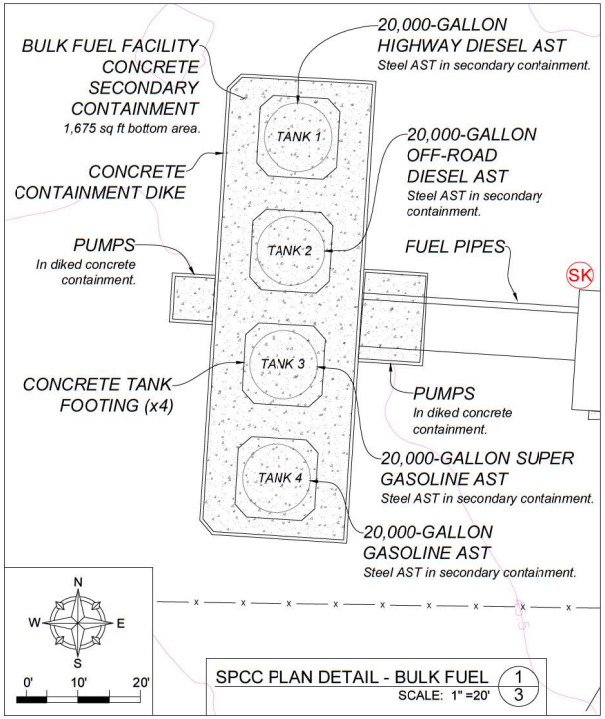
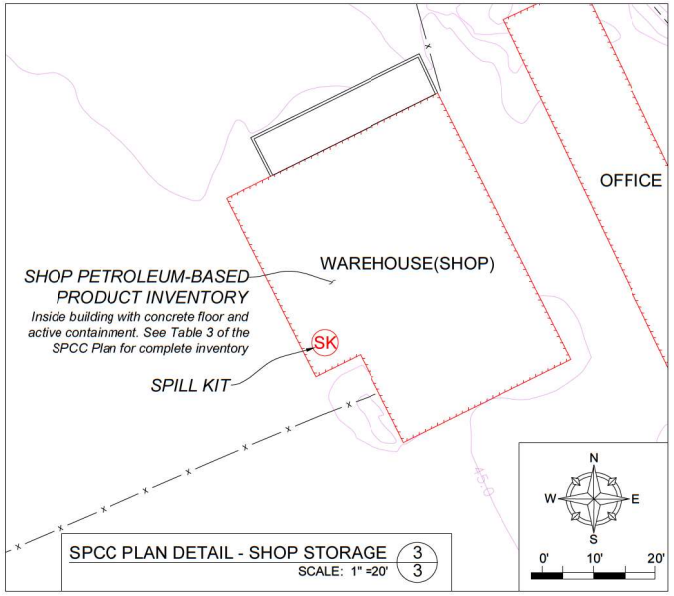
84721 HAPPEL LANE
SEASIDE, OREGON 97138

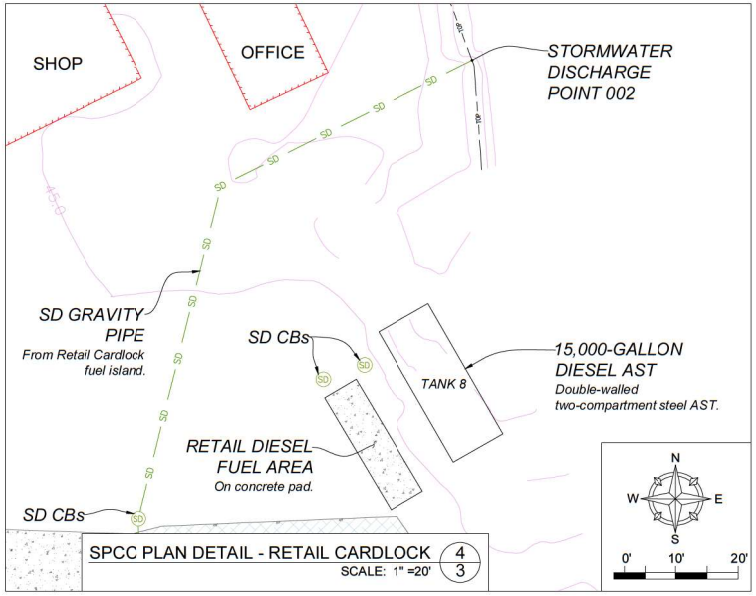
SPCC SITE PLAN

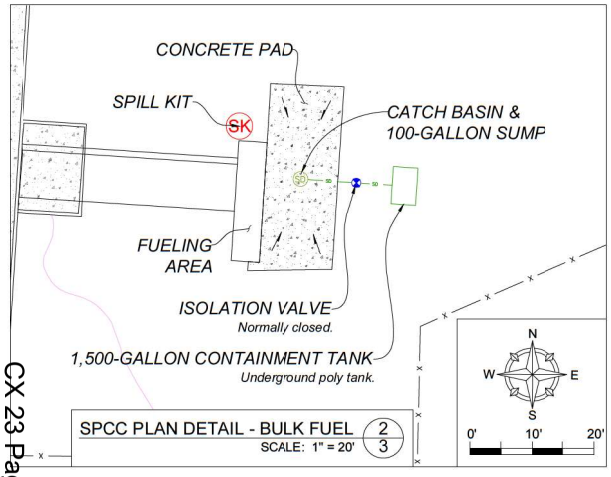
FIGURE NO. 2

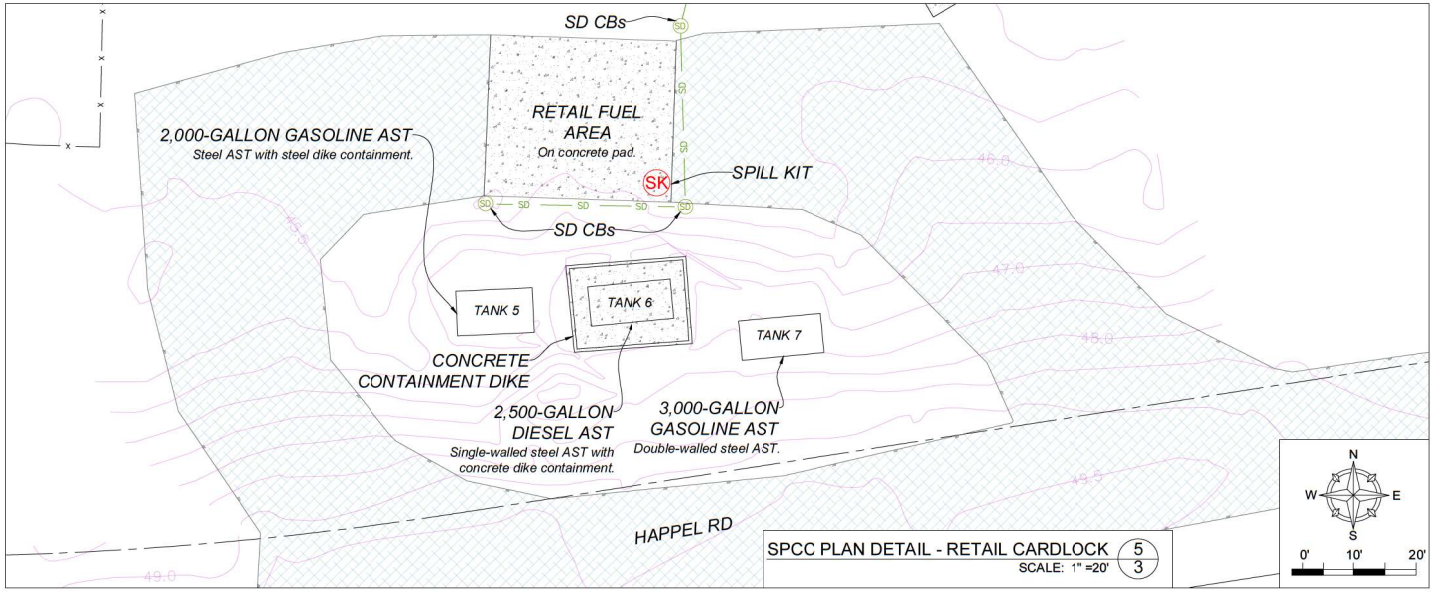
PROJECT NO. 0416











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REV.	DATE	DESCRIPTION	DWN BY	DES BY	CHK BY	APP BY

DATE OF ISSUE 11/26/24 | DWN BY KRK | DES BY DS | CHK BY | APP BY

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SPCC SITE PLAN DETAILS

FIGURE NO. 3

PROJECT NO. 0416

Appendix A:
SPCC Plan Review, Amendment, & Training Logs

Five-Year Review Log

Jackson & Son Oil

I have completed a review and evaluation of the SPCC Plan for this facility, and will/will not amend this Plan as a result.

Documentation of Review and Evaluation of SPCC Plan for the Facility			
Review Date	Plan Amendment		Name and Signature of Person Authorized to Review this Plan
	Will Amend	Will Not Amend	
	☐	☐	
	☐	☐	
	☐	☐	
	☐	☐	
	☐	☐	
	☐	☐	
	☐	☐	
	☐	☐	
	☐	☐	
	☐	☐	
	☐	☐	
	☐	☐	
	☐	☐	
	☐	☐	
	☐	☐	
	☐	☐	
	☐	☐	

Technical Amendment Log

Jackson & Son Oil

Description and Certification of Technical Amendments to SPCC Plan		
Amendment Date	**Description of Technical Amendment**	**Name and Signature of Person Certifying this Technical Amendment to the Plan**

Personnel Training Log		
Date	**Description / Scope**	**Attendees**

Appendix B: Spill Report Forms

Spill / Discharge Notification Form

In the event of a discharge of oil to navigable waters or adjoining shorelines, the following information will be provided to the National Response Center.

Information provided to the National Response Center in the Event of a Discharge			
Discharge/Discovery Date		Time	
Facility Name			
Facility Location (Address/Lat-Long/Section Township Range)			
Name of reporting individual		Telephone #	
Type of material discharged		Estimated total quantity discharged	Gallons/Barrels
Source of the discharge		Media affected	☐ Soil ☐ Water (specify) ☐ Other (specify)
Actions taken			
Damage or injuries	☐ No ☐ Yes (specify)	Evacuation needed?	☐ No ☐ Yes (specify)
Organizations and individuals contacted	☐ National Response Center 800-424-8802 Time ☐ Cleanup contractor (Specify) Time ☐ Facility personnel (Specify) Time ☐ State Agency (Specify) Time ☐ Other (Specify) Time		

SPILL/RELEASE REPORT

State of Oregon Department of Environmental Quality

1 - GENERAL INFORMATION

OERS No. _____

a. Company/Individual Name: _____

b. Address: _____

_____

c. Company Contact Person: _____

d. Phone Number(s): _____

e. Specific on-site location of the release (and address if different from above):

_____

_____

_____

Please provide a map of the site showing area(s) where the release occurred, any sample collection locations, location of roads/ditches/surface water bodies, etc.

2 - RELEASE INFORMATION

a. Date/Time Release started:_____ Date/Time stopped:_____

b. Release was reported to (specify Date/Time/Name of Person contacted where applicable):

ODEQ _____

OERS _____

NRC _____

Other (describe):_____

c. Person(s) reporting release:_____

d. Name, quantity and physical state (gas, liquid, solid or semi-solid) of material(s) released:

_____

_____

Please attach copies of material safety data sheets (MSDS) for released material(s).

e. The release affected: ____Air ____Groundwater ____Surface Water ____Soil ____Sediment

f. Name and distance to nearest surface water body(s), even if unaffected (include locations of creeks, streams, rivers and ditches that discharge to surface water on maps):

_____

Has the release reached the surface water identified above?: ____Yes ____No
Could the release potentially reach the surface water identified above? ____Yes ____No

Explain:_____

_____

g. Depth to nearest aquifer/groundwater:_____

Is nearest aquifer/groundwater potable (drinkable)? ____Yes ____No
Has the release reached the nearest aquifer/groundwater? ____Yes ____No

Explain:_____

_____

h. Release or potential release to the air occurred? ____Yes ____No
Explain:_____

_____

i. Was there a threat to public safety? ____Yes ____No
j. Is there potential for future releases? ____Yes ____No
Explain:_____

_____

k. Describe other effects/impacts from release (emergency evacuation, fish kills, etc.):

_____

_____

_____

l. Describe how the release occurred. Include details such as the release source, cause, contributing weather factors, activities occurring prior to or during the release, dates and times of various activities, first responders involved in containment activities, etc.:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

3 - SITE INFORMATION

a. Adjacent land uses include (check all that apply and depict on site maps):
____Residential ____Commercial ____Light Industrial ____Heavy Industrial
____Agricultural ____Other (describe):_____
b. What is the population density surrounding the site:_____
c. Is the site and/or release area secured by fencing or other means? ____Yes ____No
d. Soil types (check all that apply): ____alluvial ____ bedrock ____ clay ____sandy
____silt ____ silty loam ____artificial surface (cement/asphalt/etc.)
e. Describe site topography:_____

_____

_____

4 - CLEANUP INFORMATION

a. Was site cleanup performed? ____Yes ____No
If No, explain:_____

_____

b. Who performed the site cleanup?
Company Name:_____
Address: _____

_____
Cleanup Supervisor:_____
Phone Number(s): _____

c. Has all contamination been removed from the site? ____Yes ____No
If No, explain:_____

_____

d. Estimated volume of contaminated soil removed:_____

e. Estimated volume of contaminated soil left in place:_____

f. Was a hazardous waste determination made for cleanup materials? ____Yes ____No

g. Based on the determination, are the cleanup materials hazardous wastes?
____Yes ____No If Yes, list all waste codes:_____

h. Was contaminated soil or water disposed of at an off-site location? ____Yes ____No
If yes, attach copies of receipts/manifests/etc., and provide the following information:
Facility Name: _____
Address: _____

_____
Facility Contact: _____
Phone Number(s): _____

i. Is contaminated soil or water being stored and/or treated on-site? ____Yes ____No
If yes, please describe the material(s), storage and/or treatment area, and methods utilized (attach additional sheets if necessary):

_____

_____

_____

_____

j. Describe cleanup activities including what actions were taken, dates and times actions were initiated and completed, volumes of contaminated materials that were removed, etc. (attach additional sheets or contractor reports if necessary or more convenient):

_____

_____

_____

_____

_____

5 - SAMPLING INFORMATION

Attach copies of all sample data and indicate locations of sample collection on maps.

a. Were samples of contaminated soil collected? ____Yes ____No ____N/A
b. Were samples of contaminated water collected? ____Yes ____No ____N/A
c. Were samples collected to show that all contamination had been removed?
____Yes ____No ____N/A
d. Describe sampling activities, results and discuss rationale for sampling methods:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

6 - SPILL REPORT CHECKLIST

To ensure that you have gathered all the information requested by the Department in this Spill/Release Report, please complete the following checklist:

____ Map(s) of the site showing buildings, roads, surface water bodies, ditches, waterways, point of the release, extent of contamination, areas of excavation and sample collection locations attached.

____ Material Safety Data Sheet (MSDS) for released material(s) attached. **Note: an MSDS is not required for motor fuels.**

____ Sampling data/analytical results attached.

____ Receipts/manifests (if any) for disposal of cleanup materials attached.

____ Contractor reports (if any) attached.

If you would like to submit your report by e-mail it can be submitted electronically to:
DOSPILLS@deq.state.or.us

Appendix C: Inspection Forms

STI SP001 AST Record

STI SP001 Monthly Inspection Checklist

STI SP001 Annual Inspection Checklist

STI SP001 Portable Container Monthly Inspection Checklist

STI SP001 AST Record

Form completed by (Name) _____ Date _____

(Title) _____

OWNER INFORMATION	FACILITY INFORMATION	INSTALLER INFORMATION
Name	Name	Name
Number and Street	Number and Street	Number and Street
City, State, Zip Code	City, State, Zip Code	City, State, Zip Code
	Regulatory facility ID number (if applicable)	

.

OWNER'S TANK ID	OTHER ID	INITIAL SERVICE DATE

Manufacturer: Contents: Construction Date: Last Repair/Reconstruction Date:

Dimensions: Capacity: Last Change of Product Date:

Design: ☐ UL _____ ☐ SwRI _____ ☐ API _____ ☐ Other _____ ☐ Unknown
☐ Horizontal ☐ Vertical ☐ Rectangular

Construction: ☐ Bare Steel ☐ Cathodically Protected (Check one: A. ☐ Galvanic or B. ☐ Impressed Current) Date Installed: _____
☐ Coated Steel ☐ Concrete encased steel ☐ Stainless steel ☐ Other _____
☐ Double-Bottom ☐ Double-Wall ☐ Lined inside; Date lining installed: _____

Spill control: ☐ Earthen Dike ☐ Steel Dike ☐ Concrete
☐ None ☐ Other _____

Tank elevated on supports ☐ yes ☐ no
Support material: ☐ steel ☐ concrete ☐ other _____

CRDM: ☐ yes ☐ no
If yes, type: ☐ Release Prevention Barrier ☐ Elevated tank ☐ Double bottom tank
☐ Double wall tank ☐ CE-AST ☐ other _____

Release Prevention Barrier: ☐ yes ☐ no If yes, Date Installed: _____
If yes, Type: ☐ concrete ☐ synthetic liner ☐ clay liner ☐ steel ☐ other _____

AST Category: ☐ Category 1 ☐ Category 2 ☐ Category 3

OWNER'S TANK ID	OTHER ID	INITIAL SERVICE DATE

Manufacturer: Contents: Construction Date: Last Repair/Reconstruction Date:

Dimensions: Capacity: Last Change of Product Date:

Design: ☐ UL _____ ☐ SwRI _____ ☐ API _____ ☐ Other _____ ☐ Unknown
☐ Horizontal ☐ Vertical ☐ Rectangular

Construction: ☐ Bare Steel ☐ Cathodically Protected (Check one: A. ☐ Galvanic or B. ☐ Impressed Current) Date Installed: _____
☐ Coated Steel ☐ Concrete encased steel ☐ Stainless steel ☐ Other _____
☐ Double-Bottom ☐ Double-Wall ☐ Lined inside; Date lining installed: _____

Spill control: ☐ Earthen Dike ☐ Steel Dike ☐ Concrete
☐ None ☐ Other _____

Tank elevated on supports ☐ yes ☐ no
Support material: ☐ steel ☐ concrete ☐ other _____

Release Prevention Barrier: ☐ yes ☐ no If yes, Date Installed: _____
If yes, Type: ☐ concrete ☐ synthetic liner ☐ clay liner ☐ steel ☐ other _____

CRDM: ☐ yes ☐ no
If yes, type: ☐ Release Prevention Barrier ☐ Elevated tank ☐ Double bottom tank
☐ Double wall tank ☐ CE-AST ☐ other _____

AST Category: ☐ Category 1 ☐ Category 2 ☐ Category 3

OWNER'S TANK ID	OTHER ID	INITIAL SERVICE DATE

Manufacturer: Contents: Construction Date: Last Repair/Reconstruction Date:

Dimensions: Capacity: Last Change of Product Date:

Design: ☐ UL _____ ☐ SwRI _____ ☐ API _____ ☐ Other _____ ☐ Unknown
☐ Horizontal ☐ Vertical ☐ Rectangular

Construction: ☐ Bare Steel ☐ Cathodically Protected (Check one: A. ☐ Galvanic or B. ☐ Impressed Current) Date Installed: _____
☐ Coated Steel ☐ Concrete encased steel ☐ Stainless steel ☐ Other _____
☐ Double-Bottom ☐ Double-Wall ☐ Lined inside; Date lining installed: _____

Spill control: ☐ Earthen Dike ☐ Steel Dike ☐ Concrete
☐ None ☐ Other _____

Tank elevated on supports ☐ yes ☐ no
Support material: ☐ steel ☐ concrete ☐ other _____

Release Prevention Barrier: ☐ yes ☐ no If yes, Date Installed: _____
If yes, Type: ☐ concrete ☐ synthetic liner ☐ clay liner ☐ steel ☐ other _____

CRDM: ☐ yes ☐ no
If yes, type: ☐ Release Prevention Barrier ☐ Elevated tank ☐ Double bottom tank
☐ Double wall tank ☐ CE-AST ☐ other _____

AST Category: ☐ Category 1 ☐ Category 2 ☐ Category 3

STI SP001 Monthly Inspection Checklist

General Inspection Information:

Inspection Date: _____ Prior Inspection Date: _____ Retain until date: _____

Inspector Name (print): _____ Title: _____

Inspector's Signature _____

Tank(s) inspected ID _____

Regulatory facility name and ID number (if applicable) _____

Inspection Guidance:

- This checklist is intended as a model. Locally developed checklists are acceptable as long as they are substantially equivalent (as applicable). Inspections of multiple tanks may be captured on one form as long as the tanks are substantially the same.
- For equipment not included in this Standard, follow the manufacturer recommended inspection/testing schedules and procedures.
- The periodic AST Inspection is intended for monitoring the external AST condition and its containment structure. This visual inspection does not require a Certified Inspector. It shall be performed by an owner's inspector per paragraph 4.1.2 of the standard.
- Upon discovery of water in the primary tank, secondary containment area, interstice, or spill container, remove promptly or take other corrective action. Inspect the liquid for regulated products or other contaminants and dispose of properly.
- Non-conforming items important to tank or containment integrity require evaluation by an engineer experienced in AST design, a Certified Inspector, or a tank manufacturer who will determine the corrective action. Note the non-conformance and corresponding corrective action in the comment section.
- Retain the completed checklists for at least 36 months.
- **After severe weather (snow, ice, wind storms) or maintenance (such as coating) that could affect the operation of critical components (normal and emergency vents, valves), an inspection of these components is required as soon as the equipment is safely accessible after the event.**

	ITEM	STATUS	COMMENTS / DATE CORRECTED
	Tank and Piping		
1	Is tank exterior (roof, shell, heads, bottom, connections, fittings, valves, etc.) free of visible leaks? **Note**: *If "No", identify tank and describe leak and actions taken.*	□ Yes □ No	
2	Is the tank liquid level gauge legible and in good working condition?	□ Yes □ No □ N/A	
3	Is the area around the tank (concrete surfaces, ground, containment, etc.) free of visible signs of leakage?	□ Yes □ No	

4	Is the primary tank free of water or has another preventative measure been taken? NOTE: Refer to paragraphs 6.10 and 6.11 of the standard for alternatives for Category 1 tanks. N/A is only appropriate for these alternatives.	□ Yes □ No □ N/A	
5	For double-wall or double bottom tanks or CE-ASTs, is interstitial monitoring equipment (where applicable) in good working condition?	□ Yes □ No □ N/A	
6	For double-wall tanks or double bottom tanks or CE-ASTs, is interstice free of liquid? Remove the liquid if it is found. If tank product is found, investigate possible leak.	□ Yes □ No □ N/A	
	Equipment on tank		
7	If overfill equipment has a "test" button, does it activate the audible horn or light to confirm operation? If battery operated, replace battery if needed.	□ Yes □ No □ N/A	
8	Is overfill prevention equipment in good working condition? If it is equipped with a mechanical test mechanism, actuate the mechanism to confirm operation.	□ Yes □ No □ N/A	
9	Is the spill container (spill bucket) empty, free of visible leaks and in good working condition?	□ Yes □ No □ N/A	
10	Are piping connections to the tank (valves, fittings, pumps, etc.) free of visible leaks? **Note**: *If "No", identify location and describe leak.*	□ Yes □ No	
11	Do the ladders/platforms/walkways appear to be secure with no sign of severe corrosion or damage?	□ Yes □ No □ N/A	
	Containment (Diking/Impounding)		
12	Is the containment free of excess liquid, debris, cracks, corrosion, erosion, fire hazards and other integrity issues?	□ Yes □ No □ N/A	
13	Are dike drain valves closed and in good working condition?	□ Yes □ No □ N/A	
14	Are containment egress pathways clear and any gates/doors operable?	□ Yes □ No □ N/A	
	Concrete Exterior AST (CE-AST)		
15	Inspect all sides for cracks in concrete. Are there any cracks in the concrete exterior larger than 1/16"?	□ Yes □ No □ N/A	
16	Inspect concrete exterior body of the tank for cleanliness, need of coating, or rusting where applicable. Tank exterior in acceptable condition?	□ Yes □ No □ N/A	
17	Visual inspect all tank top openings including nipples, manways, tank top overfill containers, and leak detection tubes. Is the sealant between all tank top openings and concrete intact and in good condition?	□ Yes □ No □ N/A	
	Other Conditions		
18	Is the system free of any other conditions that need to be addressed for continued safe operation?	□ Yes □ No	

Additional Comments:

STI SP001 Annual Inspection Checklist

General Inspection Information:

Inspection Date: _____ Prior Inspection Date: _____ Retain until date: _____

Inspector Name (print):_____ Title: _____

Inspector's Signature: _____

Tank(s) inspected ID _____

Regulatory facility name and ID number (if applicable) _____

Inspection Guidance:

- This checklist is intended as a model. Locally developed checklists are acceptable as long as they are substantially equivalent (as applicable).
- For equipment not included in this Standard, follow the manufacturer recommended inspection/testing schedules and procedures.
- The periodic AST Inspection is intended for monitoring the external AST condition and its containment structure. This visual inspection does not require a Certified Inspector. It shall be performed by an owner's inspector per paragraph 4.1.2 of the standard.
- Remove promptly standing water or liquid discovered in the primary tank, secondary containment area, interstice, or spill container. Before discharge to the environment, inspect the liquid for regulated products or other contaminants and disposed of it properly.
- In order to comply with EPA SPCC (Spill Prevention, Control and Countermeasure) rules, a facility should regularly test liquid level sensing devices to ensure proper operation (40 CFR 112.8(c)(8)(v)).
- Non-conforming items important to tank or containment integrity require evaluation by an engineer experienced in AST design, a Certified Inspector, or a tank manufacturer who will determine the corrective action. Note the non-conformance and corresponding corrective action in the comment section.
- Retain the completed checklists for at least 36 months.
- Complete this checklist on an annual basis, supplemental to the owner monthly-performed inspection checklists.
- **Note: If a change has occurred to the tank system or containment that may affect the SPCC plan, the condition should be evaluated against the current plan requirement by a Professional Engineer knowledgeable in SPCC development and implementation.**

	ITEM	STATUS	COMMENTS / DATE CORRECTED
	Tank Foundation/Supports		
1	Free of tank settlement or foundation washout?	☐Yes ☐No	
2	Concrete pad or ring wall free of cracking and spalling?	☐Yes ☐No ☐N/A	

3	Tank supports in satisfactory condition?	☐Yes ☐No ☐N/A	
4	Is water able to drain away from tank if tank is resting on a foundation or on the ground?	☐Yes ☐No ☐N/A	
5	Is the grounding strap between the tank and foundation/supports in good condition?	☐Yes ☐No ☐N/A	
Tank Shell, Heads and Roof			
6	Free of visible signs of coating failure?	☐Yes ☐No	
7	Free of noticeable distortions, buckling, denting, or bulging?	☐Yes ☐No	
8	Free of standing water on roof?	☐Yes ☐No ☐N/A	
9	Are all labels and tags intact and legible?	☐Yes ☐No	
Tank Manways, Piping, and Equipment			
10	Flanged connection bolts tight and fully engaged with no sign of wear or corrosion?	☐Yes ☐No ☐N/A	
Tank Equipment			
11	Normal and emergency vents free of obstructions?	☐Yes ☐No	
12	Normal vent on tanks storing gasoline equipped with pressure/vacuum vent?	☐Yes ☐No ☐N/A	
13	Are flame arrestors free of corrosion and are air passages free of blockage?	☐Yes ☐No ☐N/A	
14	Is the emergency vent in good working condition and functional, as required by manufacturer? Consult manufacturer's requirements. Verify that components are moving freely (including long-bolt manways).	☐Yes ☐No ☐N/A	
15	Is interstitial leak detection equipment in good condition? Are windows on sight gauges clear? Are wire connections intact? If equipment has a test function, does it activate to confirm operation?"	☐Yes ☐No ☐N/A	

16	Are all valves free of leaks, corrosion and other damage? Follow manufacturers' instructions for regular maintenance of these items. Check the following and verify (as applicable): □ Anti-siphon valve □ Check valve □ Gate valve □ Pressure regulator valve □ Expansion relief valve □ Solenoid valve □ Fire valve □ Shear valve	☐Yes ☐No ☐N/A ☐Yes ☐No ☐N/A ☐Yes ☐No ☐N/A ☐Yes ☐No ☐N/A ☐Yes ☐No ☐N/A ☐Yes ☐No ☐N/A ☐Yes ☐No ☐N/A	
17	Are strainers and filters clean and in good condition?	☐Yes ☐No ☐N/A	
	Insulated Tanks		
18	Free of missing insulation? Insulation free of visible signs of damage? Insulation adequately protected from water intrusion?	☐Yes ☐No ☐N/A	
19	Insulation free of noticeable areas of moisture?	☐Yes ☐No ☐N/A	
20	Insulation free of mold?	☐Yes ☐No ☐N/A	
21	Free of visible signs of coating failure?	☐Yes ☐No ☐N/A	
	Tank / Piping Release Detection		
22	Is inventory control being performed and documented if required?	☐Yes ☐No ☐N/A	
23	Is release detection being performed and documented if required?	☐Yes ☐No ☐N/A	
	Other Equipment		
24	Are electrical wiring and boxes in good condition?	☐Yes ☐No ☐N/A	
25	Has the cathodic protection system on the tank been tested as required by the designing engineer?	☐Yes ☐No ☐N/A	

Additional Comments:

STI SP001 Portable Container Monthly Inspection Checklist

General Inspection Information:

Inspection Date: _____ Prior Inspection Date: _____ Retain until date: _____

Inspector Name (print): _____ Title: _____

Inspector's Signature (): _____

Container(s) inspected ID _____

Regulatory facility name and ID number (if applicable) _____

Inspection Guidance:

- This checklist is intended as a model. Locally developed checklists are acceptable as long as they are substantially equivalent (as applicable).
- This periodic Inspection is intended for monitoring the external condition and its containment structure. This visual inspection does not require a Certified Inspector. It shall be performed by an owner's inspector who is familiar with the site and can identify changes and developing problems. Note the non-conformance and corresponding corrective action in the comment section.
- Retain the completed checklists for at least 36 months.

	Item	Area:	Area:	Area:	Area:
	Portable Container Containment/Storage Area				
1	Are all portable container(s) within designated storage area?	Yes No	Yes No	Yes No	Yes No
2	Is the containment and storage area free of excess liquid, debris, cracks or fire hazards?	Yes No	Yes No	Yes No	Yes No
3	Are drain valves closed and in good working condition?	Yes No N/A	Yes No N/A	Yes No N/A	Yes No N/A
4	Are containment egress pathways clear and any gates/doors operable?	Yes No N/A	Yes No N/A	Yes No N/A	Yes No N/A
	Container				
5	Is the container free of leaks? Note: *If "No", identify container and describe leak.*	Yes No	Yes No	Yes No	Yes No
6	Is the container free of distortions, buckling, denting or bulging?	Yes No	Yes No	Yes No	Yes No

Comments:

Appendix D:
Secondary Containment Capacity Calculations Worksheets

AQUARIUS environmental

Bulk Fuel Secondary Containment

Secondary containment (gross)	
Wall Height (ft)	3
sq ft	1675
cu ft	5025
gal	**37590**

Footing Displacement (Tanks 1-4)	
sq ft (each)	161
Height (ft)	0.5
cu ft (each)	81
cu ft (x 4 footings)	**322**

Tank Displacement (3 tanks)	
sq ft (each)	95
Height (ft)	2.0
cu ft (each)	190
cu ft (x 3)	**570**
Total Displacement (Footings + Tanks up to 3')	
cu ft	892
gal	**6673**
Volume 5" of freeboard (over containment area)*	
Rainfall Depth (ft)	0.417
Containment sq ft	1675
Containment sq ft (minus tanks & footings)	1419
cu ft	591
gal	**4423**
*Volume of 25-year, 24-hour rainfall event = 5.0"/24-hr.	
Secondary containment capacity (minus footings, tanks, & 5" of freeboard)	
gal	26494

Largest tank	
gal	20000

AQUARIUS environmental

Retail Cardlock (Tank 11)

Secondary containment (gross)	
Wall Height (ft)	3
sq ft	237.6
cu ft	712.8
gal	**5332**
Volume 5" of freeboard (over containment area)*	
Rainfall Depth (ft)	0.417
Containment sq ft	237.6
cu ft	99
gal	**741**
*Volume of 25-year, 24-hour rainfall event = 5.0"/24-hr.	
Secondary containment capacity (minus 5" freeboard)	
gal	**4591**

Largest tank	
gal	2500

EXHIBIT CX 24
December 2024
Jackson & Son Oil
Compliance Plan Schedule and Status

Jackson & Son Oil Compliance Plan Schedule and Status (December 2024)

Action Item	Status	Date Completed
Bulk Petroleum (AST) Storage Area Integrity Testing	Powers Engineering & Inspection (4/5/23)	5/5/2023
Site Survey	Completed by Benthin Land Surveying Inc.	3/31/2023
1200-Z Industrial Stormwater Permit	Permit Issued	10/26/2023
Stormwater Pollution Prevention Plan (SWPCP)	Approved by DEQ	9/15/2023
Cardlock ASTs Containment (replace 2-single wall ASTs)	Installed new double-wall 15,000 gal. split AST (9,000gal/6,000gal)	11/30/2024
TLUR overfill warning system	Overfill alarm/shut off	11/30/2024
Repair/Replace bulk storage tank overfill warning devices	Completed	4/28/2023
TLUR containment (1440 gal. compartment)	Completed with SPCC Plan	11/30/2024
SPCC Plan	Completed	11/30/2024

Pending Actions

EXHIBIT CX 25
EPA, Spill, Prevention, Control and Countermeasure (SPCC) Regulation, 40 CFR part 112, A Facility Owner/Operator's Guide to Oil Pollution Prevention

United States Environmental Protection Agency

SPILL PREVENTION, CONTROL, AND COUNTERMEASURE (SPCC) REGULATION

40 CFR part 112

A Facility Owner/Operator's Guide to Oil Pollution Prevention

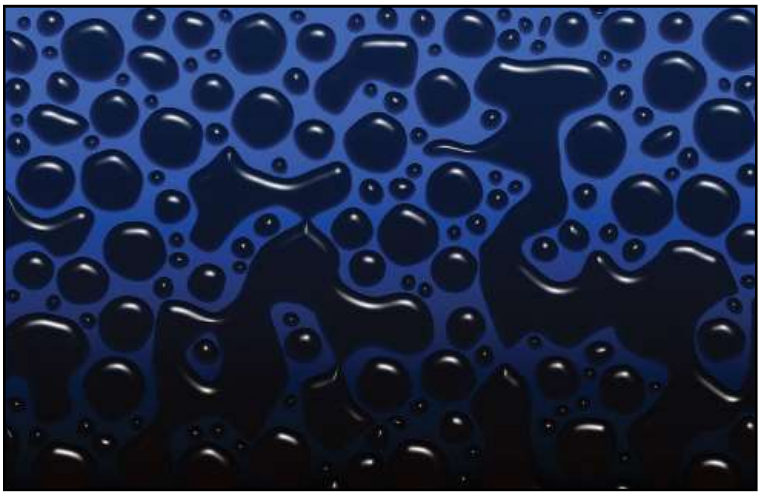
OIL POLLUTION PREVENTION

Oil spills endanger public health, impact drinking water, devastate natural resources, and disrupt the economy. In the United States we use vast quantities of oils to heat our homes, provide fuel for automobiles, and operate various pieces of equipment. During storage, transport, or as the result of energy exploration and production activities, oil and other oil-based products are sometimes spilled onto land or into waterways. When this occurs, human health and environmental quality are put at risk. Every effort must be made to prevent oil spills and to clean them up promptly once they occur. The costs associated with spill prevention are often much less than the costs associated with spill clean up, fines, and other civil liabilities. As the old adage states, "an ounce of prevention is worth a pound of cure."

The purpose of the Spill Prevention, Control, and Countermeasure (SPCC) rule is to help facilities prevent a discharge of oil into navigable waters or adjoining shorelines. This rule is part of the U.S. Environmental Protection Agency's oil spill prevention program and was published under the authority of Section 311(j)(1)(C) of the Federal Water Pollution Control Act (Clean Water Act) in 1974. The rule may be found at Title 40, Code of Federal Regulations, Part 112.

1. Who is covered by the SPCC Rule?

A facility is covered by the SPCC rule if it has an aggregate aboveground oil storage capacity greater than 1,320 U.S. gallons or a completely buried storage capacity greater than 42,000 U.S. gallons and there is a reasonable expectation of an oil discharge into or upon navigable waters of the U.S. or adjoining shorelines.



2. What types of oil are covered?

Oil of any type and in any form is covered, including, but not limited to: petroleum; fuel oil; sludge; oil refuse; oil mixed with wastes other than dredged spoil; fats, oils or greases of animal, fish, or marine mammal origin; vegetable oils, including oil from seeds, nuts, fruits, or kernels; and other oils and greases, including synthetic oils and mineral oils.

3. What kinds of facilities are covered?

A facility that stores, processes, refines, uses or consumes oil and is non-transportation-related is potentially subject to the SPCC rule. Operations that are intended to move oil from one location to another, i.e. transportation-related, are not included. Here are some examples of covered facilities and operations:


Oil Drilling

- Onshore and offshore oil well drilling facilities;
- Onshore and offshore oil production facilities (including separators and storage facilities);
- Oil refining or storage facilities;
- Industrial, commercial, agricultural, or public facilities using or storing oil;
- Certain waste treatment facilities;
- Loading racks, transfer hoses, loading arms, and other equipment;
- Vehicles (e.g. tank trucks) and railroad cars used to transport oil exclusively within the confines of a facility; and
- Pipeline systems used to transport oil exclusively within the confines of a facility.


Oil Production


Power Generators


Oil Storage

What kinds of activities are typically not covered?

Here are some examples of transportation-related activities or equipment typically not covered by the SPCC rule:


Oil Refineries

- Interstate or inter-facility oil pipeline systems
- Oil transported in vessels (e.g. ships, barges)
- Oil transported between facilities by rail car or tanker truck


Construction Sites


Airports


Marinas


Fish Canneries


Power Transmission and Distribution


Farms and Ranches

4. How do I calculate oil storage capacity?

Use the shell capacity of the container (maximum volume) and not the actual amount of product stored in the container (operational volume) to determine whether the SPCC rule applies to you. Count only containers with storage capacity equal to or greater than 55 U.S. gallons.

Simply add up the container oil storage capacities and compare your total facility capacity to the SPCC threshold:

- A total aboveground oil storage capacity greater than 1,320 U.S. gallons; **or**
- A completely buried oil storage capacity greater than 42,000 U.S. gallons.

Examples of oil storage containers at a facility that *do* count toward facility storage capacity:

Bulk storage containers: Aboveground storage tanks (either shop-built or field-erected tanks); certain completely buried tanks; partially buried tanks; tanks in vaults; bunkered tanks; and mobile or portable containers such as drums, totes, non-transportation-related tank trucks, and mobile refuelers.

Oil-filled equipment: May include electrical or operating equipment such as hydraulic systems, lubricating systems (e.g., those for pumps, compressors and other rotating equipment, including pumpjack lubrication systems), gear boxes, machining coolant systems, heat transfer systems, transformers, circuit breakers, and electrical switches; or manufacturing equipment such as process vessels, or other equipment used in the alteration, processing or refining of crude oil and other non-petroleum oils, including animal fats and vegetable oils.

5. How do I determine if my facility could reasonably discharge oil into or upon navigable waters or adjoining shorelines?

You can determine this by considering the geography and location of your facility relative to nearby navigable waters (such as streams, creeks and other waterways). Additionally, you should determine if ditches, gullies, storm sewers or other drainage systems may transport an oil spill to nearby streams. Estimate the volume of oil that could be spilled in an incident and how that oil might drain or flow from your facility and the soil conditions or geographic features that might affect the flow toward waterways. Also you may want to consider whether precipitation runoff could transport oil into navigable waters or adjoining shorelines. You may not take into account manmade features, such as dikes, equipment, or

other structures that might prevent, contain, hinder, or restrain the flow of oil. Assume these manmade features are not present when making your determination. If you consider the applicable factors described above and determine a spill can reasonably flow to a waterway, then you must comply with the SPCC rule.

6. What do covered facilities have to do?

A facility that meets the criteria described above must comply with the SPCC rule by preventing oil spills and developing and implementing an SPCC Plan.

Prevent oil spills: Steps that a facility owner/operator can take to prevent oil spills include:

- Using containers suitable for the oil stored. For example, use a container designed for flammable liquids to store gasoline;
- Providing overfill prevention for your oil storage containers. You could use a high-level alarm or audible vent;
- Providing sized secondary containment for bulk storage containers, such as a dike or a remote impoundment. The containment needs to hold the full capacity of the container plus possible rainfall. The dike may be constructed of earth or concrete. A double-walled tank may also suffice;
- Providing general secondary containment to catch the most likely oil spill where you transfer oil to and from containers and for mobile refuelers and tanker trucks. For example, you may use sorbent materials, drip pans or curbing for these areas; and
- Periodically inspecting and testing pipes and containers. You need to visually inspect aboveground pipes and oil containers according to industry standards; buried pipes need to be leak tested when they are installed or repaired. Include a written record of inspections in the Plan.

Prepare and implement an SPCC Plan: The owner or operator of the facility must develop and implement an SPCC Plan that describes oil handling operations, spill prevention practices, discharge or drainage controls, and the personnel, equipment and resources at the facility that are used to prevent oil spills from reaching navigable waters or adjoining shorelines. Although each SPCC Plan is unique to the facility, there are certain elements that must be described in every Plan including:

- Operating procedures at the facility to prevent oil spills;
- Control measures (such as secondary containment) installed to prevent oil spills from entering navigable waters or adjoining shorelines; and
- Countermeasures to contain, cleanup, and mitigate the effects of an oil spill that has impacted navigable waters or adjoining shorelines.

Did you know

A spill of only *one* gallon of oil can contaminate a *million* gallons of water.

Every SPCC Plan must be prepared in accordance with good engineering practices. Every SPCC Plan must be certified by a Professional Engineer unless the owner/operator is able to, and chooses to, self-certify the Plan (see section 7).

No matter who certifies your SPCC Plan, remember that ultimately the owner or operator is responsible for complying with the rule. A copy of the rule is available at www.epa.gov/oilspill. You may also call or write to the nearest EPA office listed in section 11.

Important Elements of an SPCC Plan:

- Facility diagram and description of the facility
- Oil discharge predictions
- Appropriate secondary containment or diversionary structures
- Facility drainage
- Site security
- Facility inspections
- Requirements for bulk storage containers including inspections, overfill, and integrity testing requirements
- Transfer procedures and equipment (including piping)
- Requirements for qualified oil-filled operational equipment
- Loading/unloading rack requirements and procedures for tank cars and tank trucks
- Brittle fracture evaluations for aboveground field constructed containers
- Personnel training and oil discharge prevention briefings
- Recordkeeping requirements
- Five-year Plan review
- Management approval
- Plan certification (by a Professional Engineer (PE) or in certain cases by the facility owner/operator)

7. Who can certify the SPCC Plan?

Preparation of the SPCC Plan is the responsibility of the facility owner or operator, who may also be eligible to self-certify the SPCC Plan if the facility meets the following eligibility criteria for a qualified facility:

1. Total aboveground oil storage capacity of 10,000 U.S. gallons or less, and
2. In the 3 years prior to the date the SPCC Plan is certified, the facility has had no single discharge of oil to navigable waters or adjoining shorelines exceeding 1,000 U.S. gallons, or no two discharges of oil to navigable waters or adjoining shorelines each exceeding 42 U.S. gallons within any 12-month period.[1]

If the facility does not meet the above criteria, the SPCC Plan must be certified by a licensed Professional Engineer (PE). By certifying the SPCC Plan, the PE confirms that:

1. He is familiar with the requirements of the rule;
2. He or an agent has visited and examined the facility;
3. The SPCC Plan has been prepared in accordance with good engineering practices, including consideration of applicable industry standards, and with the requirements of the rule;

[1] Not including discharges that are the result of natural disasters, acts of war, or terrorism. When determining the applicability of this SPCC reporting requirement, the gallon amount(s) specified (either 1,000 or 42) refers to the amount of oil that actually reaches navigable waters or adjoining shorelines not the total amount of oil spilled. EPA considers the entire volume of the discharge to be oil for the purposes of these reporting requirements.

4. Procedures for required inspections and testing have been established; and
5. The SPCC Plan is adequate for the facility.

When self-certifying a facility's SPCC Plan, the owner/operator makes a similar statement. See §112.6 of the rule for other qualified facility SPCC Plan requirements.

8. How do I ask for an extension of time to prepare and implement an SPCC Plan?

If you are unable to prepare or amend and fully implement your SPCC Plan by the compliance date due to either non-availability of qualified personnel, or delays in construction or equipment delivery beyond the control of the owner or operator, then you may request an extension from your EPA Regional Administrator (RA). A list of EPA Regional Offices is available in section 11.

Submit a written request for an extension to your RA. Your request must include:

- A full explanation of the cause for any such delay and the specific aspects of the SPCC Plan affected by the delay;
- A full discussion of actions being taken or contemplated to minimize or mitigate such delay; and
- A proposed time schedule for the implementation of any corrective actions being taken or contemplated, including interim dates for completion of tests or studies, installation and operation of any necessary equipment, or other preventive measures.

You may present additional oral or written statements in support of your extension request. The extension request does not relieve you of your obligation to comply with the requirements of the rule. The RA may request a copy of your SPCC Plan to evaluate the extension request.

If the RA approves an extension of time for particular equipment or other specific aspects of the SPCC Plan, you must still comply with SPCC requirements not covered by the extension.

9. Do I need to submit the SPCC Plan to EPA?

No, SPCC Plans should be maintained at any facility normally attended at least four hours per day or at the nearest field office if the facility is not so staffed. Submit your Plan to EPA only when requested.

10. What should I do if I have a spill?

If your facility discharges oil to navigable waters or adjoining shorelines, you are required to follow certain federal reporting requirements. Any person in charge of an onshore or offshore facility must notify the National Response Center (NRC) immediately after he or she has knowledge of the discharge. Oil discharges that reach navigable waters must be reported to the NRC at 1-800-424-8802 or 1-202-426-2675. The NRC is the federal government's centralized reporting center, which is staffed 24 hours per day by U.S. Coast Guard personnel.

A common misunderstanding is that by reporting to the NRC you have met state and local reporting requirements. The report to the NRC only satisfies your federal reporting requirements under the Clean

Water Act. Additional state and local reporting requirements may apply. In most cases it makes sense to call 911 in the event of an oil spill, particularly in the case of flammable or combustible oil spills.

Any owner or operator of a facility regulated by the SPCC rule must also report the discharge to EPA when:

- More than 1,000 U.S. gallons of oil is discharged to navigable waters or adjoining shorelines in a single event; or
- More than 42 U.S. gallons of oil in each of two discharges to navigable waters or adjoining shorelines occurs within any twelve-month period.

Note: The gallon amount(s) specified (either 1,000 or 42) refers to the amount of oil that actually reaches navigable waters or adjoining shorelines, not the total amount of oil spilled. EPA considers the entire volume of the discharge to be oil for the purposes of these reporting requirements.

After the NRC has been notified, the owner/operator must provide the following information to the RA:

- Name and location of the facility
- Owner/operator name
- Maximum storage/handling capacity of the facility and normal daily throughput
- Corrective actions and countermeasures taken, including descriptions of equipment repairs and replacements
- Adequate description of the facility, including maps, flow diagrams, and topographical maps, as necessary
- Cause of the discharge to navigable waters, including a failure analysis
- Failure analysis of the system where the discharge occurred
- Additional preventive measures taken or planned to take to minimize discharge reoccurrence

The RA may require additional information. You must also send a copy of this information to the agency or agencies in charge of oil pollution control activities in the state in which the SPCC-regulated facility is located.

11. Who should I contact for more information?

- Visit the Office of Emergency Management's Web site at www.epa.gov/emergencies.
- See the Government Printing Office website at www.gpoaccess.gov/cfr to access the current CFR.
- See the *SPCC Guidance for Regional Inspectors* for more detailed guidance on specific SPCC provisions, at http://www.epa.gov/emergencies/content/spcc/spcc_guidance.htm.

Call our hotline, the Superfund, TRI, EPCRA, RMP, and Oil Information Center
(800) 424-9346 or (703) 412-9810 TDD (800) 553-7672 or (703) 412-3323
(Mon-Thurs 10:00 am to 3:00 pm ET except Federal Holidays) or see
http://www.epa.gov/superfund/contacts/infocenter/index.htm

You can also call or write:

U.S. EPA Headquarters
Office of Emergency Management
Ariel Rios Building – Mail Code 5104A
1200 Pennsylvania Avenue
Washington, DC 20460
202-564-8600

U.S. EPA Region I
One Congress Street, Suite 1100
Boston, MA 02114-2023
617-918-1111
CT, ME, MA, NH, RI, and VT

U.S. EPA Region II
2890 Woodbridge Avenue
Building 209 (MS211)
Edison, NJ 08837-3679
732-321-6654
NJ, NY, PR, and USVI

U.S. EPA Region III
1650 Arch Street (3HS61)
Philadelphia, PA 19103-2029
800-438-2474
DE, DC, MD, PA, VA, and WV

U.S. EPA Region IV
61 Forsyth Street
Atlanta, GA 30365-3415
404-562-9900
AL, FL, GA, KY, MS, NC, SC, and TN

U.S. EPA Region V
77 West Jackson Boulevard (SE-5J)
Chicago, IL 60604-3590
312-353-2000
IL, IN, MI, MN, OH, and WI

U.S. EPA Region VI
1445 Ross Avenue (6SF-RO)
Dallas, TX 75202-2733
214-665-6444
AR, LA, NM, OK, and TX

U.S. EPA Region VII
901 North 5th Street
Kansas City, KS 66101
913-551-7050
IA, KS, MO, and NE

U.S. EPA Region VIII
1595 Wynkoop Street (8EPR-ER)
Denver, CO 80202-1129
800-227-8917
CO, MT, ND, SD, UT, and WY

U.S. EPA Region IX
75 Hawthorne Street (SFD-9-4)
San Francisco, CA 94105
415-972-3052 or 415-972-3089
AZ, CA, HI, NV, AS, and GU

U.S. EPA Region X
1200 6th Avenue (ECL-116)
Seattle, WA 98101
800-424-4372
AK, ID, OR, and WA

U.S. EPA Alaska Operations Office
222 West 7th Avenue, #19
Anchorage, AK 99513-7588
907-271-5083

To report an oil or chemical spill, call the National Response Center at (800) 424-8802.

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