

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

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U.S.EPA - Region 09

In the matter of:)	U.S. EPA Docket Nos.
)	
)	
Shell Martinez Refinery)	
3485 Pacheco Boulevard)	MM-09-2018-0001
Martinez, California)	OPA-09-2018-0003
)	
)	
Shell Oil Products US)	CONSENT AGREEMENT AND
)	FINAL ORDER PURSUANT TO
)	40 C.F.R. SECTIONS 22.13 AND
<u>Respondent.</u>)	22.18

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 113(d) of the Clean Air Act ("CAA"), as amended, 42 U.S.C. § 7413(d), Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9609, Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045, Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a)(1), Section 311(b)(6)(B) of the Clean Water Act ("CWA"), as amended, 33 U.S.C. § 1321(b)(6)(B), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, as codified at 40 Code of Federal Regulations (C.F.R.) Part 22 ("Consolidated Rules").

2. Complainant is the United States Environmental Protection Agency, Region IX ("EPA").

3. Respondent is Shell Oil Products U.S., a corporation doing business in the state of California ("Respondent").

4. This Consent Agreement and Final Order ("CA/FO"), pursuant to 40 C.F.R. §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated the following statutes and their implementing regulations: Section 112(r) of the CAA, 42 U.S.C. § 7412(r), Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), Section 304 of EPCRA, 42 U.S.C. § 11004, Section 3008 of RCRA, 42 U.S.C. § 6928, and Section 311 of the CWA, 42 U.S.C. § 1321.

5. The Parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their respective interest and in the public interest.

B. STATUTORY AND REGULATORY FRAMEWORK

i. Section 112(r) of the CAA

6. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations, owners and operators of stationary sources at which a regulated substance is present in more than a threshold quantity (“TQ”) must prepare and implement a risk management plan (“RMP”) to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

ii. Section 103 of CERCLA

7. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6 require any person in charge of a vessel or an offshore or onshore facility to immediately notify the National Response Center (“NRC”) as soon as he or she has knowledge of a release of a hazardous substance that exceeds the reportable quantity (“RQ”) during a 24-hour period.

iii. Section 304 of EPCRA

8. Section 304(a) of EPCRA, 42 U.S.C. § 11004(a)(1), and 40 C.F.R. § 355.40, require the owner or operator of a facility that produces, uses, or stores hazardous chemicals to immediately notify the appropriate state and local emergency planning and response agencies when (a) an extremely hazardous substance is released from the facility and (b) the release requires a CERCLA 103(a), 42 U.S.C. § 9603(a) notification. The owner or operator must immediately provide the required notice to the community emergency coordinator for the local emergency planning committee (“LEPC”) for any area affected by the release and to the designated state emergency response commission (“SERC”) for any state that is affected by the release.

iv. Subtitle C of RCRA

9. Subtitle C of RCRA requires the EPA Administrator to promulgate regulations establishing a hazardous waste management program. Section 3006 of RCRA, 42 U.S.C. § 6926, provides, *inter alia*, that authorized state hazardous waste management programs are carried out under Subtitle C of RCRA.

10. The State of California (“State”) received authorization to administer the hazardous waste management program in lieu of the federal program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271, on August 1, 1992. The authorized hazardous waste program is established pursuant to the Hazardous Waste Control Law, Chapter 6.5 of Division 20

of the California Health and Safety Code, and the regulations promulgated thereunder at Title 22, Division 4.5 of the California Code of Regulations, 22 C.C.R. §§ 66001 *et seq.* The State of California has been authorized for all the hazardous waste management regulations referenced in this CA/FO.

11. A violation of California's authorized hazardous waste program, found at Health & Safety Code § 25100 *et seq.*, constitutes a violation of Subtitle C of RCRA and, therefore, a person who violates California's authorized hazardous waste program is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928.

v. Section 311 of CWA

12. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore facilities . . . and to contain such discharges"

13. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA his Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), authority to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities.

14. EPA subsequently promulgated regulations, codified at 40 C.F.R. Part 112 (the "Oil Pollution Prevention regulations"), pursuant to these delegated statutory authorities and pursuant to its authorities under the CWA, 33 U.S.C. §§ 1251 *et seq.*, which set forth certain procedures, methods and requirements, including requirements for Spill Prevention, Countermeasure and Control ("SPCC") planning, applicable to an owner or operator of an onshore facility, which, due to its location, reasonably could be expected to discharge oil into or on navigable waters and their adjoining shorelines in such quantities as EPA has determined in 40 C.F.R. Part 110 may be harmful to the public health or welfare or the environment of the United States.

15. "Navigable waters" are defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 112.2 (2008).

16. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), EPA has determined that the quantities of oil that may be harmful to the public health or welfare or the environment of the United States include discharges of oil that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

C. EPA's GENERAL ALLEGATIONS

17. Respondent owns and operates the Shell Martinez Refinery located at 3485 Pacheco Boulevard in Martinez, California (the "Facility"). The Facility processes about 165,000 barrels of crude oil per day and also makes asphalt, diesel, jet turbine fuel, petroleum coke, propane, residential fuel oils (for ships and industrial boilers), and sulfur.

18. On November 17-20, 2014, EPA performed an inspection pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), Sections 304-312 of EPCRA, 42 U.S.C. §§ 11004-12, and Section 103 of CERCLA, 42 U.S.C. § 9603(a). On March 23-27 and 30, 2015, EPA performed an inspection pursuant to Subtitle C of RCRA. On November 15, 2016, EPA performed an inspection pursuant to Section 311 of the CWA, 42 U.S.C. § 1321. Based upon the information gathered during these inspections and subsequent investigations, EPA determined that Respondent violated certain provisions of the CAA, CERCLA, EPCRA, RCRA and the CWA.

i. Section 112(r) of the CAA

19. Respondent is subject to the powers vested in the EPA Administrator by Section 113 of the CAA, 42 U.S.C. § 7413.

20. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes EPA to assess civil penalties for any violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

21. The Administrator of EPA delegated the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA to Regional Administrators with EPA delegation 7-6-A, dated August 4, 1994. The Regional Administrator, EPA Region IX, in turn, re delegated this authority with respect to enforcement of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), to the Director of the Superfund Division, as well as the Director of the Enforcement Division, Region IX, with delegation R9 1265.05A, dated February 11, 2013.

22. In a letter dated December 9, 2016, the United States Department of Justice granted EPA a waiver to allow EPA to pursue certain administrative actions for violations of 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

23. At all times relevant to this CA/FO, Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

24. The Facility is a "stationary source" as defined by Sections 111(a)(3) and 112(a)(3) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3).

25. At all times, relevant to this CA/FO, Respondent has been the “owner or operator” of the Facility as defined by Sections 111(a)(5) and 112(a)(9) of the CAA, 42 U.S.C. §§ 7411(a)(5) and 7412(a)(9).

26. Pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), EPA established a TQ for each “regulated substance” above which a facility shall be subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). For substances designated as “regulated toxic substances” or “regulated flammable substances,” the TQs are specified at 40 C.F.R. § 68.130, Table 3.

27. Butane is a “regulated flammable substance” listed under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), with a TQ of 10,000 pounds. 40 C.F.R. § 68.130, Table 3.

28. At all times, relevant to this CA/FO, Respondent has 10,000 pounds or more of butane in one or more processes at its Facility.

ii. Section 103 of CERCLA

29. Section 109 of CERCLA, 42 U.S.C. § 9609, authorizes EPA to assess civil penalties for any violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

30. The Administrator of EPA delegated enforcement authority under Section 109 of CERCLA, 42 U.S.C. § 9609, to the Regional Administrators with EPA delegation 14-31, dated May 11, 1994. The Regional Administrator, EPA Region IX, in turn, redelegated that authority to the Director of the Superfund Division, Region IX, with delegation R9 1290.16.

31. At all times relevant to this CA/FO, Respondent has been a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

32. The Facility is an “onshore facility” as defined by Sections 101(18) and 101(9) of CERCLA, 42 U.S.C. §§ 9601(18) and 9601(9).

33. At all times relevant to this CA/FO, Respondent has been the “owner or operator” of the Facility as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20).

34. Sulfuric acid is designated as a “hazardous substance” in Sections 101(14) and 102(a) of CERCLA, 42 U.S.C. §§ 9601(14) and 9602(a), and 40 C.F.R. § 302.4, Table 302.4 and Appendix A to Section 302.4. The RQ for sulfuric acid is 1000 pounds.

35. At all times relevant to this CA/FO, Respondent has had 1000 pounds or more of sulfuric acid in one or more processes at its Facility.

iii. Section 304 of EPCRA

36. Section 325 of EPCRA, 42 U.S.C. § 11045, authorizes EPA to assess civil penalties for any violation of Section 304 of EPCRA, 42 U.S.C. § 11004.

37. The Administrator of EPA delegated enforcement authority under EPCRA to the Regional Administrators with EPA delegation 22-3-A, dated May 11, 1994. The Regional Administrator, EPA Region IX, in turn, re delegated that authority to enforce, *inter alia*, Section 304 of EPCRA, 42 U.S.C. § 11004, to the Director of the Superfund Division, Region IX, with delegation R9 1290.18.

38. At all times relevant to this CA/FO, Respondent has been a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

39. The Facility is a “facility” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

40. Sulfuric acid is designated as an “extremely hazardous substance” in Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), and 40 C.F.R. § 355, Appendices A and B. The RQ for sulfuric acid is 1000 pounds.

41. Sulfuric acid is a “hazardous chemical” as defined by Sections 329(5) and 311(e) of EPCRA, 42 U.S.C. §§ 11049(5) and 11021(e).

42. At all times relevant to this CA/FO, the California Governor’s Office of Emergency Service (“Cal OES”) has been the SERC.

43. At all times relevant to this CA/FO, Respondent “produced, used, or stored” sulfuric acid at the Facility within the meaning of Section 304 of EPCRA, 42 U.S.C. § 11004.

iv. Subtitle C of RCRA

44. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders assessing a civil penalty and/or requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA *et seq.*, 42 U.S.C. § 6921 *et seq.*

45. The Administrator has delegated enforcement authority under Section 3008 of RCRA, 42 U.S.C. § 6928, to the EPA Regional Administrators, with delegation 8-9-A, last revised February 4, 2016. The Regional Administrator, EPA Region IX, in turn, re delegated that authority to the

Director of the Enforcement Division, Region IX, with delegation R9-120 TN 111, dated January 22, 2016.

46. Respondent is a “person” as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].¹

47. Respondent is the “operator” of a facility as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].

48. Respondent is a “generator” of hazardous waste as defined in 22 C.C.R. § 66260.10 [40 C.F.R. § 260.10].

49. Respondent is or has been engaged in “treatment,” “storage,” or “disposal” of hazardous waste as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].

50. Respondent generates and accumulates, or has generated and accumulated, materials that are “wastes” as defined in 22 C.C.R. §§ 66260.10 and 66261.2 [*see also* 40 C.F.R. § 261.2].

51. At the Facility, Respondent generates and accumulates, or has generated and accumulated, “hazardous waste” as defined in California Health & Safety Code § 25117, and 22 C.C.R. §§ 66260.10 and 66261.3 [*see also* RCRA § 1004(5), and 40 C.F.R. §§ 260.10 and 261.3]. These hazardous wastes include but are not limited to paint waste (D001 and D035), laboratory waste, including silver nitrate (D011), spent chloroform (D022), spent acetone/xylene (F003), spent toluene (F005), petroleum refinery primary oil/water/solids separation sludge (F037), petroleum refinery secondary oil/water/solids separation sludge (F038), heat exchanger bundle cleaning sludge (K050), and API separator sludge (K051).

iv. Section 311 of the CWA

52. Section 311(b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(B), authorizes the EPA to assess civil penalties for any violation of Section 311(j) of the CWA, 33 U.S.C. § 1321(j).

53. The Administrator has delegated enforcement authority under Section 311(b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(B), to the EPA Regional Administrators, with delegation 2-51, dated May 11, 1994. The Regional Administrator, EPA Region IX, in turn, redelegated that authority to the Director of the Enforcement Division, Region IX, with delegation R9-2-51, dated February 11, 2013.

¹ All citations to the “C.C.R.” refer to Division 4.5 of Title 22 of the current California Code of Regulations. EPA is enforcing California hazardous waste management program requirements as approved and authorized by the United States. As a convenience, corresponding Federal citations are provided in brackets.

54. At all times relevant to this CA/FO, Respondent has been the “owner or operator” within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), of the Facility.

55. Respondent is a “person” within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.

56. The Facility is “non-transportation-related” within the meaning of 40 C.F.R. § 112.2.

57. The Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

58. At all times relevant to this CA/FO, Respondent was engaged in the production of oil and oil products.

59. At all times relevant to this CA/FO, the Facility had several above-ground oil storage tanks and process vessels with a combined oil storage capacity of greater than 400,000,000 gallons.

60. The Facility is in close proximity to “navigable waters” of the United States within the meaning of Section 502(7) of the CWA, 42 U.S.C. § 1362(7), and 40 C.F.R. § 112.2 (2008); specifically, the Facility is located in Martinez, adjacent to the Carquinez Strait, which flows into the San Pablo Bay, which flows into the Pacific Ocean.

61. Due to its location, the Facility could reasonably be expected to discharge oil from an above-ground container to a navigable water of the United States or its adjoining shorelines in a harmful quantity, and is therefore subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112. Because of its size and proximity to sensitive environments and drinking water intakes, the Facility is also subject to the facility response planning requirements at 40 C.F.R. § 112.20.

D. EPA’s ALLEGED VIOLATIONS

COUNT IA

(failure to accurately analyze and report in its RMP a worst-case release scenario)

62. Paragraphs 1 through 61 above are incorporated herein by this reference as if they were set forth here in their entirety.

63. 40 C.F.R. § 68.25 requires that an owner or operator shall analyze and report in the RMP

one worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint resulting from an accidental release of regulated flammable substances from covered processes under worst-case conditions.

64. At the time of Respondent's June 18, 2014 RMP submission, a release of butane from a different tank than what was reported, could result in a greater distance to endpoint.

65. By failing to accurately analyze and report in its RMP the worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint resulting from an accidental release of a regulated flammable substance, Respondent violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.25.

COUNT IB

(failure to compile accurate piping and instrument diagrams ("P&IDs"))

66. Paragraphs 1 through 61 above are incorporated herein by this reference as if they were set forth here in their entirety.

67. Respondent failed to update P&ID 584752, revision 41, to show that a drain line had been removed and that there were valves around the pressure gauges.

68. By failing to update and ensure that all of its process P&IDs accurately reflected the design of a covered process as installed in the field, Respondent violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.65(d)(1)(ii).

COUNT II

(failure to immediately notify the NRC of a release of an RQ of sulfuric acid)

69. Paragraphs 1 through 61 above are incorporated herein by this reference as if they were set forth here in their entirety.

70. On December 14, 2013, the Facility released 4,605 pounds of sulfuric acid. Respondent's operator discovered the release at 7:30 a.m. Respondent failed to notify the NRC until 11:24 a.m.

71. By failing to immediately notify the NRC, Respondent violated Section 103 of CERCLA, 42 U.S.C. § 9603.

COUNT III

(failure to immediately notify the SERC of a release of an RQ of sulfuric acid)

72. Paragraphs 1 through 61 above are incorporated herein by this reference as if they were

set forth here in their entirety.

73. On December 14, 2013, the Facility released 4,605 pounds of sulfuric acid. Respondent's operator discovered the release at 7:30 a.m. Respondent failed to notify Cal OES, the SERC, until 11:24 a.m.

74. By failing to immediately notify the SERC, Respondent violated Section 304 of EPCRA, 42 U.S.C. § 11004.

COUNT IV
(failure to make a hazardous waste determination)

75. Paragraphs 1 through 61 above are incorporated herein by this reference as if they were set forth here in their entirety.

76. 22 C.C.R. § 66262.11 states that a person who generates a solid waste, as defined by 22 C.C.R. § 66261.2, must make an accurate determination as to whether that waste is a hazardous waste. [*see also* 40 C.F.R. § 262.11].

77. During the inspection, EPA observed eighteen containers of waste in the paint shop at the Facility being managed as nonhazardous waste. Respondent subsequently determined that the containers contained D001 and/or D035 hazardous waste.

78. Based on evidence gathered during its investigation, EPA determined that Respondent discharged stormwater from its process areas into the surface impoundments throughout the Facility. Respondent had not sampled the stormwater before discharging it into the surface impoundments.

79. Therefore, EPA alleges that Respondent failed to determine if all solid waste generated at the Facility was hazardous, a violation of 22 C.C.R. § 66262.11 [*see also* 40 C.F.R. § 262.11].

COUNT V
(failure to obtain a permit for storage, treatment and disposal of hazardous waste)

80. Paragraphs 1 through 61 above are incorporated herein by this reference as if they were set forth here in their entirety.

81. 22 C.C.R. § 66270.1(c) requires that each person owning or operating a facility where hazardous waste is treated, stored, or disposed have a permit [*see also* 40 C.F.R. § 270.1(c)].

82. At the time of the inspection, Respondent did not have a permit or grant of interim status

to store, treat, or dispose of hazardous waste under 22 C.C.R. § 66270.1(c) [*see also* 40 C.F.R. § 270.1(c)].

83. Based on information gathered during the inspection, EPA alleges that Respondent stored and treated D011, D022, F003 and F005 hazardous wastes generated in the Quality Assurance Laboratory and Crack Product Field Laboratory.

84. Based on information gathered during the inspection, EPA alleges that K050 hazardous waste was released from Respondent's heat exchanger bundle cleaning pad.

85. Based on information gathered during the inspection, EPA determined that Respondent stored, treated and disposed of D001 and D035 hazardous waste in its paint shop.

86. Therefore, EPA alleges that Respondent treated, stored and disposed of hazardous waste without a permit, a violation of 22 C.C.R. § 66270.1 [*see also* 40 C.F.R. § 270.1].

COUNT VI

(Failure to maintain and operate the Facility to minimize the possibility of an unplanned release)

87. Paragraphs 1 through 61 above are incorporated herein by this reference as if they were set forth here in their entirety.

88. 22 C.C.R. §§ 66262.34(a)(4) and 66265.31 provide that facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment [*see also* 40 C.F.R. §§ 262.34(a) and 265.31].

89. During the inspection, EPA observed a thin layer of fly ash (K048 and D010 hazardous waste) on the wooden structure beneath the baghouse near the carbon monoxide boiler unit.

90. Therefore, EPA alleges that Respondent failed to operate the Facility to minimize the possibility of a release of hazardous waste, a violation of 22 C.C.R. §§ 66262.34(a)(4) and 66265.31 [*see also* 40 C.F.R. §§ 262.34(a) and 265.31].

Count VII

(failure to comply with satellite accumulation requirements)

91. Paragraphs 1 through 61 above are incorporated herein by this reference as if they were

set forth here in their entirety.

92. Pursuant to 22 C.C.R. § 66262.34(e)(1), a generator may accumulate as much as 55 gallons of hazardous waste in containers “at or near any point of generation” so long as certain conditions are met [*see also* 40 C.F.R. § 262.34(c)(1)].

93. Pursuant to 22 C.C.R. § 66262.34(e)(3), once the 55-gallon limit is reached, the generator has only three days before the waste must be moved to a central storage area and all relevant pre-transport requirements apply [*see also* 40 C.F.R. § 262.34(c)(2)].

94. Based on information gathered during the inspection, EPA determined that Respondent exceeded the three-day pre-transport accumulation time requirement for two 55-gallon paint solvent wastes in its paint shop.

95. Therefore, EPA alleges that Respondent has violated 22 C.C.R. § 66262.34(e)(3) [*see also* 40 C.F.R. § 262.34(c)].

Count VIII

(failure to comply with container management requirements)

96. Paragraphs 1 through 61 above are incorporated herein by this reference as if they were set forth here in their entirety.

97. 22 C.C.R. § 66262.34(f) requires that containers storing hazardous waste be marked with the date upon which the period of accumulation begins, the words hazardous waste, information about the composition and physical state of the wastes, a statement or statements which call attention to the particular hazardous properties of the waste (e.g., flammable, reactive, etc.), and the name and address of the person producing the waste [*see also* 40 C.F.R. 262.34(a)(2)-(3)].

98. 22 C.C.R. § 66265.173 requires that “[a] container holding hazardous waste shall always be closed during transfer and storage, except when it is necessary to add or remove waste.” [*see also* 40 C.F.R. § 265.173].

99. During the inspection, EPA inspectors observed that containers in and just outside the Quality Assurance Laboratory that contained F003, F005, D011, and D022 hazardous waste were unlabeled. EPA’s inspectors also observed open containers of F003 and F005 hazardous waste under the laboratory hood in the Quality Assurance Laboratory.

100. Therefore, EPA alleges that Respondent failed to comply with container management

requirements for hazardous waste generators in violation of 22 C.C.R. §§ 66262.34(a)(1)(A), 66262.34(a)(2), (3), and 66265.173 [*see also* 40 C.F.R. §§ 262.34(a)(2), 262.34(a)(3), and 265.173].

Count IX
(improper use of a 6400-gallon mobile refueler tank)

101. Paragraphs 1 through 61 above are incorporated herein by this reference as if they were set forth here in their entirety.

102. SPCC requirements for facilities include requirements to: (1) maintain adequate containment or diversionary structures to prevent a discharge, 40 C.F.R. § 112.7(c); (2) keep written procedures and a record of the inspections and tests, 40 C.F.R. § 112.7(e); (3) not use a container for the storage of oil unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature, 40 C.F.R. § 112.8(c)(1); (4) test or inspect on a regular schedule in accordance with appropriate industry standard, 40 C.F.R. § 112.8(c)(6); and (5) promptly correct visible discharges which result in a loss of oil, 40 C.F.R. § 112.8(c)(10).

103. During the inspection, EPA observed a 6400-gallon mobile refueler in use as a stationary fuel storage and dispensing tank that did not meet all of the SPCC requirements.

104. Respondent's use of the 6400-gallon mobile refueler at the Facility that did not meet all SPCC requirements is a violation of 40 C.F.R. §§ 112.7 and 112.8.

Count X
(inadequate Federal Response Plan ("FRP"))

105. Paragraphs 1 through 61 above are incorporated herein by this reference as if they were set forth here in their entirety.

106. 40 C.F.R. § 112.20(h) requires that an FRP either follow a model format or be granted a waiver by the Regional Administrator to deviate from the model format. 40 C.F.R. § 112.20(h)(5) requires that an FRP include a discussion of specific planning scenarios for, among other things, a Worst Case Discharge ("WCD"), as calculated using the appropriate worksheet in Appendix D to the regulations. Part A of Appendix D sets forth a worksheet to calculate the WCD for an onshore storage facility. For multiple-tank facilities that have adequate secondary containment, the worksheet requires that the facility "[c]alculate the capacity of the largest single aboveground oil storage tank within an adequate secondary containment area or the combined capacity of a group of above-ground oil storage tanks permanently manifolded together, whichever is greater."

107. Respondent has not been granted a waiver by the Regional Administrator to deviate from the model format.

108. The largest tank at SMR is tank TK-17596, which has a shell capacity of 14,700,000 gallons.

109. At the time of the inspection, Respondent mistakenly reported a WCD of 320,460 gallons in its FRP.

110. Respondent's failure to utilize the correct volume of the largest aboveground storage container at the Facility for determining the WCD volume is a violation of 40 C.F.R. § 112.20(h).

E. CIVIL PENALTY

111. The Complainant proposes that Respondent be assessed, and Respondent agrees to pay ONE HUNDRED FORTY-TWO THOUSAND SIX HUNDRED SIXTY-FOUR DOLLARS (\$142,664), as the civil penalty for the violations alleged herein. \$97,575 resolves Counts I-VIII, and \$45,089 resolves Counts IX and X.

112. The proposed penalty was calculated in accordance with the "Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68" dated June 2012, the "Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act" dated September 30, 1999, the "June 2003 RCRA Civil Penalty Policy," and the "Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act" dated August 1998, and was adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act, as amended, and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

F. ADMISSIONS AND WAIVERS OF RIGHTS

113. For the purposes of this proceeding, Respondent admits and agrees that EPA has jurisdiction and authority over the subject matter of the action commenced in this CA/FO and over Respondent. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

114. Respondent neither admits nor denies any allegations of fact or law set forth in Section D of this CA/FO and does not admit any liability arising out of the occurrences alleged in this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing, and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

G. PARTIES BOUND

115. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns, until the civil penalty required under Sections E and I has been paid in accordance with Section I, the compliance tasks required under Section H have been completed in accordance with Section H, the SEP required under Section J has been completed in accordance with Section J, and any delays in performance and/or stipulated penalties have been resolved. When those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.

116. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

117. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

H. COMPLIANCE TASKS

118. All submissions to EPA in this section shall be to Sharon Lin at EPA at lin.sharon@epa.gov.

Surface Impoundment Sampling and Reporting

119. Sampling Protocol. Within thirty (30) days of the Effective Date, Respondent shall submit a sampling protocol for Upper Lake Slobodnik and Pond 6 at the Wastewater Treatment Plant to EPA for approval.

120. Sampling. Upon approval of the sampling protocol, Respondent shall analyze the samples using the toxicity characteristic leaching procedure ("TCLP") for benzene and associated compounds (ethylbenzene, toluene, xylenes) using EPA Methods 1311/8260 for Upper Lake Slobodnik and for TCLP benzene and associated compounds (ethylbenzene, toluene, xylenes) using EPA Methods 1311/8260 and total suspended solids ("TSS") for Pond 6. Respondent shall

take the samples at the inlet to the two unlined surface impoundments, Upper Lake Slobodnik and Pond 6 at the Wastewater Treatment Plant, a minimum of five times over the course of two wet weather seasons. Respondent shall use best efforts to obtain at least two of the samples for each surface impoundment during the first rain after a dry period of at least thirty (30) days.

121. Reporting. Within forty-five (45) days of each sampling event, Respondent shall submit a report of the sampling results, including a summary, chain of custody, quality assurance/quality control, and photographs of the sampling activity, to EPA.

122. Final Report. Within sixty (60) days of the final sampling event, Respondent shall submit a final report summarizing the results of the sampling, to EPA.

Characterizing Spent or Recyclable Materials/Waste in the Laboratories

123. Within thirty (30) days of the Effective Date, Respondent shall submit a report of all spent or recyclable materials/waste generated from laboratory activities to EPA. The report shall include the name of the generated spent or recyclable material/waste, analytical method used to generate the spent or recyclable material/waste, the percent hydrocarbon of the spent or recyclable material/waste, and the disposition of the spent or recyclable material (i.e., recoverable oil or hazardous waste).

124. Respondent shall review and, where appropriate update, all method test instructions (“MTIs”) used in its laboratories. Within six (6) months of the Effective Date, Respondent shall review and update those MTIs for which disposition of waste is expected to alter and submit a certification that this review and update has been completed to EPA. The remainder of MTIs shall be reviewed in the course of their normal renewal cycle.

125. Prior to implementing any change to a test or adding a new test in its laboratories, Respondent shall review its MTI to ensure that the final disposition of the new stream generated is appropriate.

Heat Exchanger Bundle Cleaning Pad (“Pad”)

126. Upgrading Pad. Within three (3) months of the Effective Date, Respondent shall evaluate the integrity of the Pad (including sumps and trenches), and identify upgrades to the Pad to ensure that all material placed on the Pad is managed appropriately. The upgrades shall include, but are not limited to, repairing damaged concrete, applying a concrete sealer over the entire surface of the Pad, and installing more curbing or berms around the perimeter of the Pad. Respondent shall submit the scope of work for the upgrade of the Pad that was identified, above, to EPA for review prior to commencing the upgrade. Respondent shall implement the scope of work to upgrade the Pad. Respondent shall submit certification that this task is complete to EPA within nine (9) months of the Effective Date.

127. Updating the operating procedures for the Pad. Within three (3) months of the Effective Date, Respondent shall submit to EPA updated operating procedures (GMP-2 Bundle Pad Access) to include the following procedures: (1) ensuring that all material placed on the Pad is legitimately recycled; (2) inspecting the Pad by maintenance personnel/contractors prior to use to ensure that Pad is not in a condition that could lead to releases; (3) cleaning of Pad after each use to ensure that materials are removed from the Pad; (4) ensuring that material does not exit the Pad (e.g., from tires/boots); (5) ensuring the materials are removed from the sumps/trenches after each use; (6) conducting quarterly inspections and maintenance by appropriately trained personnel, as described in further detail in Paragraph 128, below; and (7) documenting cleaning of the Pad and transfer of materials from Pad, including sumps/trenches, in the Facility's operating record.

128. Inspection and maintenance of the Pad. Within thirty (30) days of the Effective Date, Respondent shall begin quarterly inspections and maintenance of the of the Pad to ensure that all material is managed appropriately. Such inspection and maintenance shall include: (1) inspection for conditions that could lead to a release from the Pad including, but not limited to, inspections for cracked concrete or sealant, areas of damaged concrete around the rails, cracks, gaps or spaces on the perimeter wall of the Pad; and (2) as-needed preventative maintenance, including repairing any deterioration and re-sealing of the Pad. The results of the quarterly inspection and corrective actions taken shall be documented in the Facility's operating record and maintained for five years.

I. PAYMENT OF CIVIL PENALTY

129. Respondent consents to the assessment of and agrees to pay a civil penalty of ONE HUNDRED FORTY-TWO THOUSAND SIX HUNDRED SIXTY-FOUR DOLLARS (\$142,664) in full settlement of the federal civil penalty claims set forth in this CA/FO.

130. Respondent shall submit payment of the ONE HUNDRED FORTY-TWO THOUSAND SIX HUNDRED SIXTY-FOUR DOLLARS (\$142,664) within thirty (30) calendar days of the Effective Date of this CA/FO, in accordance with one of the options set forth below. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. All payments shall indicate the name of the Facility, the Respondent's name and address, and the EPA docket number of this action.

Regular Mail:

Payment shall be made by certified or cashier's check payable to "Treasurer, United States of America," and sent as follows:
U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center

In the Matter of Shell Martinez Refinery
Shell Oil Products US
Consent Agreement and Final Order

PO Box 979077
St. Louis, MO 63197-9000

Overnight Mail:

Payment shall be made by certified or cashier's check payable to "Treasurer, United States of America," and sent as follows:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Craig Steffen (513) 487-2091

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Beneficiary: US Environmental Protection Agency

*Note: Foreign banks **must** use a United States Bank to send a wire transfer to the US EPA.

ACH (also known as REX or remittance express):

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

On Line Payment:

Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.

This payment option can be accessed from the information below:

www.pay.gov

In the Matter of Shell Martinez Refinery
Shell Oil Products US
Consent Agreement and Final Order

Enter "sfo1.1" in the search field
Open form and complete required fields

**If clarification regarding a particular method of payment remittance is needed,
contact the EPA Cincinnati Finance Center at 513-487-2091.**

131. At the time payment is made, a copy of the check shall be sent to:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105

With an electronic copy to:

Sharon Lin (ENF-2-2)
Enforcement Division
U.S. Environmental Protection Agency - Region 9
Lin.Sharon@epa.gov

Janice Witul (ENF-3-2)
Enforcement Division
U.S. Environmental Protection Agency - Region 9
Witul.Janice@epa.gov

Pete Reich (ENF-3-2)
Enforcement Division
U.S. Environmental Protection Agency - Region 9
Reich.Peter@epa.gov

Donald Nixon (SFD-9-3)
Superfund Division
U.S. Environmental Protection Agency - Region 9
Nixon.Donald@epa.gov

And

Rebekah Reynolds (ORC-3-2)
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 9
Reynolds.Rebekah@epa.gov

132. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), each payment must be received by the due date set forth in this CA/FO to avoid additional charges. If payment is not received by the due date, interest will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 C.F.R. § 13.11. In addition, a 6% per annum penalty assessed monthly will further apply on any principal amount not paid within ninety (90) calendar days of its due date. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.

133. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

J. SUPPLEMENTAL ENVIRONMENTAL PROJECT

134. As a condition of settlement, Respondent shall perform the specified supplemental environmental projects ("SEP") to enhance the emergency response capabilities of the Contra Costa County Health Services Hazardous Materials Program ("Hazardous Materials Program"). Performance of the tasks detailed in this Section shall constitute satisfactory performance of the SEP, which the parties agree are intended to provide significant environmental and/or public health protection and improvements.

135. The Hazardous Materials Programs provides, among other things, incident response services to Contra Costa County. In developing this SEP, Respondent contacted the Hazardous Materials Program and inquired whether it could utilize emergency planning and preparedness assistance to better plan for and respond to spills or releases. In response to this inquiry, the Hazardous Materials Program requested that Respondent purchase certain equipment to improve the Hazardous Materials Program's ability to provide response services by identifying and monitoring chemicals and other hazardous materials in the field, and be appropriately outfitted, which will be needed for emergency planning and preparedness.

136. Within one hundred twenty (120) days of the Effective Date of this CA/FO:

a. Respondent shall purchase: (i) two (2) TSI DustTrak DRX Aerosol Monitor Handheld 8534 for TWENTY-TWO THOUSAND DOLLARS (\$22,000); (ii) three (3) backup batteries-Part Number: 801681 for SIX HUNDRED SEVENTY-FIVE DOLLARS (\$675); (c) three (iii) battery charges-Part Number 801686 for NINE HUNDRED SIXTY DOLLARS (\$960); (iv) sulphur dioxide gaskets for the C-Kit-Indian Springs numbers: AEGS, AC13A, BEGS, BC14A, CEGS, CC96 for FOUR THOUSAND FOUR HUNDRED NINETY-ONE DOLLARS (\$4,491); and

b. Respondent shall purchase as much personal protective equipment (“PPE”) for incident response as can be purchased for TEN THOUSAND DOLLARS (\$10,000), and shall make delivery of the PPE to the Hazardous Materials Program. The particular model and size of the PPE will be as agreed upon by both Respondent and the Hazardous Materials Program.

Upon receipt of the equipment described above, Respondent shall make delivery of the equipment to the Hazardous Materials Program.

137. Respondent shall use all reasonable efforts to provide equipment to the Hazardous Materials Program as described above, but may substitute equipment that supports emergency planning and preparedness that is similar in total cost to the equipment described above with the consent of the Hazardous Materials Program. Any substitution changing the total amount spent is subject to Section K.

138. Respondent shall expend at least THIRTY-EIGHT THOUSAND ONE HUNDRED TWENTY-SIX DOLLARS (\$38,126) to complete the SEPs described herein.

139. Within one hundred fifty (150) days of the Effective Date of this CA/FO, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following information: (i) a detailed description of the SEP as implemented with an accounting showing the amount Respondent expended for the implementation of the SEP and substantiating documentation, including but not limited to (i) invoices, purchase orders, checks or receipts, and correspondence with the Hazardous Materials Program; (ii) a brief, narrative description of the environmental and public health benefits resulting from implementation of the SEP; and (iii) certification that the project has been fully implemented pursuant to the provisions of the CA/FO, as described in further detail below.

140. In the SEP Completion Report, Respondent shall, by one of its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement: “I certify under penalty of law that I have examined and am familiar with the information submitted in this document and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.” The Final SEP Completion Report shall be submitted via hard copy or electronic mail to:

Donald Nixon (SFD-9-3)
Superfund Division
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105

Nixon.Donald@epa.gov

141. Failure to complete the SEP Completion Report required herein shall be deemed a violation of this CA/FO and Respondent shall be liable for stipulated penalties pursuant to Section K.

142. With regard to the SEP, Respondent, by signing this CA/FO, certifies the truth and accuracy of each of the following: (i) that all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is at least THIRTY-EIGHT THOUSAND ONE HUNDRED TWENTY-SIX DOLLARS (\$38,126); (ii) that, as of the date of this Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum; (iii) that the SEP is not a project that Respondent was planning or intending to construct, perform or implement other than in settlement of the claims resolved in this Agreement; (iv) that Respondent has not received and will not receive credit for the SEP in any other enforcement action; (v) that Respondent will not receive reimbursement for any portion of the SEP from another person or entity; (vi) that for federal income tax purposes, Respondent will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and (vii) that Respondent is not a party to any federal financial transaction that is funding or could fund the same activity as the SEP described in this Agreement and has inquired of the Hazardous Materials Program whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the Hazardous Materials Program that to its knowledge it is not a party to such a transaction.

143. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP under this CA/FO from the date of Respondent's execution of this CA/FO shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the Environmental Protection Agency to enforce federal laws."

K. DELAY IN PERFORMANCE/STIPULATED PENALTIES

144. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as follows: FIVE HUNDRED DOLLARS (\$500) per day for first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for sixteenth to thirtieth day of delay, and ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) per day for each day of delay thereafter. Compliance by Respondent shall include

completion of any activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.

145. In the event that Respondent fails to substantially conduct the SEP in accordance with the terms of this CA/FO, Respondent shall pay a stipulated penalty of FIFTY-SEVEN THOUSAND ONE HUNDRED EIGHT-NINE (\$57,189) less any stipulated penalties already paid for failure to submit the SEP Completion Report pursuant to Paragraph 149.

146. If Respondent demonstrates that the SEP tasks described in Section J were completed, but Respondent incurs less than 90 percent of the costs required to be incurred pursuant to Section J, Respondent shall pay a stipulated penalty to the United States that is the difference between THIRTY-EIGHT THOUSAND ONE HUNDRED TWENTY-SIX DOLLARS (\$38,126) and the actual costs incurred by Respondent toward completion of the tasks described in Section J.

147. If Respondent fails to demonstrate that the SEP tasks in Section J were completed, but EPA determines that the Respondent: (i) made good faith and timely efforts to complete these tasks; and (ii) certifies, with supporting documentation, that at least 90 percent of the costs that were required to be incurred pursuant to Section J were incurred for the SEP tasks described in Section J, Respondent shall not be liable for any stipulated penalty under Section K.

148. For failure to submit the SEP Completion Report required by Section J, Respondent shall pay a stipulated penalty in the amount of FIVE HUNDRED DOLLARS (\$500) for each day after the date the SEP Completion Report was due until it is submitted. Stipulated penalties for failure to submit the SEP Completion Report shall begin to accrue on the day after the report is due, and shall continue to accrue through the final day of EPA's receipt of this document. Notwithstanding the penalty amounts described in this paragraph, the total stipulated penalty paid by Respondent pursuant to this paragraph shall not exceed of FIFTY-SEVEN THOUSAND ONE HUNDRED EIGHT-NINE (\$57,189).

149. All penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. §13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.

150. All penalties shall be remitted in the same manner described in Section I.

151. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.

152. Notwithstanding any other provision of this Section, EPA may, in its unreviewable

discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.

153. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions that may be available to EPA because of Respondent's failure to comply with any of the requirements of this CA/FO.

154. The payment of stipulated penalties specified in the Section shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

L. CERTIFICATION OF COMPLIANCE

155. In executing this CA/FO, subject to the provisions of Section H above, Respondent certifies under penalty of law to EPA that it has fully complied with the following statutes and their implementing regulations that formed the basis for the violations alleged in Section D, above: Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), Section 304 of EPCRA, 42 U.S.C. § 11004, Section 3008 of RCRA, 42 U.S.C. § 6928, and Section 311 of CWA, 42 U.S.C. § 1321.

156. This certification of compliance is based upon true, accurate, and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

M. RESERVATION OF RIGHTS

157. Except as addressed in this CA/FO, EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 113 of the CAA, 42 U.S.C. § 7413, Section 109 of CERCLA, 42 U.S.C. § 9609, Section 325 of EPCRA, 42 U.S.C. § 11045, Section 3008 of RCRA, 42 U.S.C. § 6928 and Section 311(b) of the CWA, 33 U.S.C. § 1321(b). This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under CAA, CERCLA, EPCRA, RCRA, CWA, or any other statutory, regulatory or common law enforcement authority of the United States.

158. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with the CAA, CERCLA, EPCRA, RCRA, the CWA or any other applicable local, State or federal laws and regulations.

159. The entry of this CA/FO and Respondent's consent to comply shall not limit or

otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as they relate to Respondent's liability for federal civil penalties for the alleged violations and facts as set forth in Section D of this CA/FO.

160. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, State or federal permits.

N. OTHER CLAIMS

161. Nothing in this CA/FO shall constitute or be construed as a release from any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

O. MISCELLANEOUS

162. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

163. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

164. Each party to this action shall bear its own costs and attorneys' fees.

165. EPA and Respondent consent to entry of this CA/FO without further notice.

P. EFFECTIVE DATE

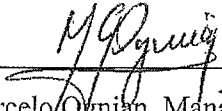
166. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

IT IS SO AGREED.

In the Matter of Shell Martinez Refinery
Shell Oil Products US
Consent Agreement and Final Order

FOR RESPONDENT SHELL OIL PRODUCTS US:


4/26/2018
Date



Marcelo Ognian, Manager
Health, Safety, Security and Environmental


FOR COMPLAINANT U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 9:

5/14/18
Date



Enrique Manzanilla, Director
Superfund Division

5/15/18
Date



Kathleen Johnson, Director
Enforcement Division

In the Matter of Shell Martinez Refinery
Shell Oil Products US
Consent Agreement and Final Order

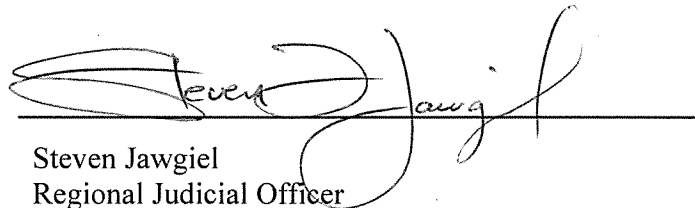
FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 (U.S. EPA Docket Nos. OPA-09-2018-0003, and MM-09-2018-0001) be entered and that Respondent pay a civil penalty of ONE HUNDRED FORTY-TWO THOUSAND SIX HUNDRED SIXTY-FOUR DOLLARS (\$142,664), due within thirty (30) days from the Effective Date of this Consent Agreement and Final Order, implement the compliance tasks described in Section H, and implement the Supplemental Environmental Project described in Section J of this CA/FO, in accordance with all terms and conditions of this Consent Agreement and Final Order.

This Final Order shall be effective upon filing by the Regional Hearing Clerk.

05/23/18

Date

A handwritten signature in black ink, appearing to read "Steven Jawgiel", is written over a horizontal line. The signature is stylized with large, sweeping loops.

Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region 9

CERTIFICATE OF SERVICE

I hereby certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of *Shell Oil Products, Inc.* (MM-09-2018-0001 and OPA-09-2018-0003), signed by the Regional Judicial Officer, has been filed with the Regional Hearing Clerk and was served on Respondent, and Counsel for EPA, as indicated below:

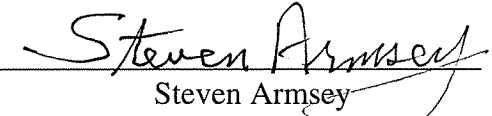
BY FIRST CLASS MAIL:
(Certified w/Return Receipt)

Respondent - Marcelo Orgmian
Shell Oil Products
P.O. Box 711
3485 Pacheco Boulevard
Martinez, CA 94553

HAND DELIVERED:

Complainant - Rebekah Reynolds, Esq.
Office of Regional Counsel
ENVIRONMENTAL PROTECTION AGENCY
75 Hawthorne Street
San Francisco, CA 94105

Date: May 23, 2018


Steven Armsey
Regional Hearing Clerk
EPA, Region 9