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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8  
1595 WYNKOOP STREET  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>**

**DOCKET NO.: CWA-08-2022-0007**

**IN THE MATTER OF:** )  
 )  
**MORTON & COFFMAN, L.L.C.** ) **FINAL ORDER**  
**DBA MOUNTAIN VIEW CENEX** )  
 )  
 )  
 )  
**RESPONDENT** )

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

**SO ORDERED THIS** 22nd **DAY OF** June, **2022.**

**KATHERIN HALL**  
Digitally signed by  
KATHERIN HALL  
Date: 2022.06.22  
12:19:57 -06'00'  
Katherin E. Hall  
Regional Judicial Officer

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

IN THE MATTER OF:	)	
	)	
	)	<b>CONSENT AGREEMENT</b>
MORTON & COFFMAN, L. L. C.	)	
DBA Mountain View Cenex,	)	
	)	Docket No. CWA-08-2022-0007
	)	
Respondent	)	

**I. INTRODUCTION**

1. This is an administrative penalty assessment proceeding pursuant to sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits* (Consolidated Rules of Practice), as codified at 40 C.F.R. part 22.
2. The parties to this proceeding are the undersigned U.S. Environmental Protection Agency official (Complainant) and MORTON & COFFMAN, L. L. C., doing business as Mountain View Cenex (Respondent).
3. Respondent owns and/or operates the Mountain View Cenex (Facility) at 240 Mountain View, in Saint Ignatius, Montana 59865 (the Site).
4. The parties, having agreed settlement of this action is in the public interest, consent to the entry of this consent agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

**II. JURISDICTION**

5. This Agreement is issued under the authority of section 311(b)(6) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6).
6. This proceeding is subject to the Consolidated Rules of Practice, under which this proceeding may be resolved by a final order from a Regional Judicial Officer ratifying this Agreement. The final order will simultaneously commence and conclude this proceeding. 40 C.F.R. § 22.13(b).

**III. GOVERNING LAW**

7. Congress has directed the President to issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from

vessels and from onshore and offshore facilities, and to contain such discharges . . . .” 33 U.S.C. § 1321(j)(1)(C). The President delegated the authority to issue these regulations to the EPA Administrator in section 2(b)(1) of Executive Order No. 12777 (56 Fed. Reg. 54757, October 21, 1991).

8. In response to the directive referenced in paragraph 7, above, the EPA promulgated 40 C.F.R. part 112, entitled “Oil Pollution Prevention.”
9. A facility subject to 40 C.F.R. part 112 is required to prepare a written Spill Prevention, Control, and Countermeasure (SPCC) plan and to adhere to the discharge prevention and containment practices specified in that regulation. The regulations in 40 C.F.R. part 112, subparts A through C will be referenced as the “SPCC Regulations.”
10. The SPCC Regulations apply to “any owner or operator of a non-transportation related onshore or offshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products, which due to its location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in [40 C.F.R. part 110], into or upon the navigable waters of the United States or adjoining shorelines.” There are certain exceptions in 40 C.F.R. § 112.1(d), such as for facilities with both completely buried oil storage capacities of 42,000 U.S. gallons or less and aggregate aboveground oil storage capacities of 1,320 U.S. gallons.

#### **IV. ALLEGATIONS OF FACT AND LAW**

The following allegations apply at all times relevant to this Agreement:

11. Respondent is a Montana corporation. Its registered agent for service of process in Montana is Stuart Morton, 240 Mountain View, Saint Ignatius, Montana 59865.
12. Respondent is a “person” for purposes of sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 122.2.
13. On June 28, 2018, EPA representatives conducted an SPCC inspection of the Site (the SPCC Inspection).
14. At the Site (see paragraph 3, above), Respondent stores oil.
15. At the time of the inspection on June 28, 2020, the Site had an aboveground oil storage capacity of 47,170 gallons, including but not limited to three aboveground storage tanks: a 20,000- gallon tank of diesel fuel; a 15,000- gallon tank of diesel fuel; a 12,000- gallon tank of diesel fuel; and three 55- gallon drums of used oil.
16. On August 5, 2020, Respondent informed the EPA that the Facility’s capacity had changed due to the installation of three new 5,000- gallon aboveground tanks replacing the three old above ground storage tanks and that the Facility’s new above ground storage capacity is 15,000 gallons.

17. In the event of an uncontained spill, oil from any of the tanks referenced in paragraphs 145 and 16, above, would flow for approximately 850 feet to Mission Creek, and then for approximately 11 miles along Mission Creek to the Flathead River.
18. Mission Creek is a perennial stream and a permanent tributary of the Flathead River.
19. The Flathead River is a traditionally navigable water.
20. Mission Creek is a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2. It is also a “water of the United States” as defined in 40 C.F.R. § 122.2.
21. The Flathead River is a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2. It is also a “water of the United States” as defined in 40 C.F.R. § 122.2.
22. Due to its location, the Site could reasonably be expected to discharge oil and/or other pollutants to Mission Creek and/or its adjoining shorelines in quantities that would (a) violate applicable water quality standards or (b) cause a film or sheen upon or discoloration of the surface of the navigable waters of the United States or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of such water or adjoining shorelines.
23. Due to its location, the Site could reasonably be expected to discharge oil and/or other pollutants to the Flathead River and/or its adjoining shorelines in quantities that would (a) violate applicable water quality standards or (b) cause a film or sheen upon or discoloration of the surface of the navigable waters of the United States or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of such water or adjoining shorelines.
24. The Site is an “onshore facility” as that term is defined in section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).
25. The Site is a non-transportation related “facility” as that term is defined in 40 C.F.R. § 112.2.
26. Respondent is an “owner or operator” of the Site as that term is defined in section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6).
27. The Site is subject to the SPCC Regulations.
28. At the date of the inspection on June 28, 2020, Respondent did not have an SPCC plan prepared for the Site.
29. On May 19, 2021, Respondent provided the EPA with a copy of an SPCC plan for the Site, which was dated November 2020. This SPCC Plan is in compliance with the SPCC regulations.

## **V. ALLEGED VIOLATIONS OF LAW**

The alleged violations are set forth in the following counts:

**Count 1: Failure to Maintain an SPCC Plan on Site**

30. Respondent is required to prepare an SPCC plan for the Site in accordance with the requirements of 40 C.F.R. part 112.
31. Respondent is required to maintain a complete copy of its SPCC Plan at the Site. 40 C.F.R. § 112.3(e)(1).
32. As of the time of EPA's inspection referenced in paragraph 13, above, and until May 19, 2021, Respondent had no SPCC plan at the Site.
33. Each day Respondent failed to maintain a copy of the SPCC Plan for the Site at the Site constitutes a violation of 40 C.F.R. § 112.3(e)(1).

**Count 2: Failure to Prepare an Adequate SPCC Plan**

34. On May 19, 2021, Respondent submitted an SPCC plan to EPA. Prior to this date, Respondent did not have an adequate SPCC plan.
35. SPCC plans are required to comply with all applicable requirements in 40 C.F.R. part 112. Whenever an SPCC plan does not comply with certain applicable requirements of 40 C.F.R. part 112, the plan must state the reasons for nonconformance and describe in detail alternative methods and the means of achieving equivalent environmental protection. 40 C.F.R. § 112.7(a)(2).
36. 40 C.F.R. § 112.7(a)(3) requires SPCC Plans be prepared in accordance with good engineering practices, have the full approval of management at level of authority to commit the necessary resources to fully implement the Plan, and be prepared in writing. Prior to May 19, 2021, Respondent was in violation of 40 C.F.R. § 112.7(a).
37. Each day Respondent failed to prepare an adequate SPCC Plan for the Site constitutes a violation of 40 C.F.R. § 112.7(a).

**Count 3: Failure to Conduct and Retain Inspection Records**

38. Respondent is required to conduct inspections and tests in accordance with written procedures. Respondent is required to retain such written procedures and a signed record of the inspections and tests with the Site's SPCC plan for a period of three years. 40 C.F.R. § 112.7(e).
39. No inspection records were available during the inspection.

40. Respondent failed to conduct and maintain records of inspections in violation of 40 C.F.R. § 112.7(e).
41. Each day Respondent has stored oil at the Site (in excess of the threshold cited in paragraph 10, above) without conducting and maintaining records of inspections is a violation of 40 C.F.R. § 112.7(e).

**Count 4: Failure to Train Employees in Spill Response**

42. Respondent is required to train oil-handling personnel in the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and the contents of the facility SPCC plan. Respondent is required to schedule and conduct discharge prevention briefings for oil-handling personnel at least once a year to assure adequate understanding of the SPCC plan for the facility. 40 C.F.R. § 112.7(f).
43. Respondent failed to train oil-handling personnel in the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and the contents of the facility SPCC plan; and Respondent failed to schedule and conduct discharge prevention briefings for oil-handling personnel at least once a year to assure adequate understanding of the SPCC plan for the facility in violation of 40 C.F.R. § 112.7(f).
44. Each day Respondent failed to train oil-handling personnel as described above constitutes a violation of 40 C.F.R. § 112.7(f).

**Count 5: Failure to Conduct Integrity Testing of Above Ground Storage Tanks**

45. Respondent is required to test or inspect each aboveground container for integrity on a regular schedule and whenever Respondent makes material repairs. Respondent must determine, in accordance with industry standards, the appropriate qualification for personnel performing tests and inspections, the frequency and type of testing and inspections, which take into account container size, configuration, and design. Respondent must keep comparison records and must also inspect the container's supports and foundations. Respondent must frequently inspect the outside of the container for signs of deterioration, discharges or accumulation of oil inside diked areas. 40 C.F.R. § 112.8(c)(6).
46. Respondent failed to conduct tests and inspections for integrity on each aboveground container on a regular schedule as required by 40 C.F.R. § 112.8(c)(6).
47. Each day Respondent has stored oil at the Site (in excess of the threshold cited in paragraph 10, above) without providing adequate testing and inspection of each aboveground container for integrity on a regular schedule constitutes a violation of 40 C.F.R. § 112.8(c)(6).

**Count 6: Failure to Properly Design Pipe Supports to Minimize Abrasion and Corrosion**

48. Respondent is required to properly design pipe supports to minimize abrasion and corrosion and allow for expansion and contraction. 40 C.F.R. § 112.8(d)(3).
49. Respondent used cinder blocks and wood for pipe support and therefore failed to properly design pipe supports to minimize abrasion and corrosion and allow for expansion and contraction as required by 40 C.F.R. § 112.8(d)(3).
50. Each day Respondent has stored oil at the Site (in excess of the threshold cited in paragraph 10, above) without properly designed pipe supports constitutes a violation of 40 C.F.R. § 112.8(d)(3).

**VI. TERMS OF CONSENT AGREEMENT**

51. For the purpose of this proceeding, Respondent:
  - a. admits the facts set forth in paragraph 3 of this Agreement;
  - b. admits the jurisdictional allegations in section II of this Agreement;
  - c. neither admits nor denies the factual allegations in sections IV and V of this Agreement;
  - d. consents to the assessment of a civil penalty as stated below;
  - e. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement action; and
  - f. waives any right to contest the allegations in this Agreement and to appeal any final order approving this Agreement.
52. Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6) establishes the civil administrative penalty amounts EPA may assess in this type of proceeding. The maximum amounts have been adjusted for inflation under 40 C.F.R. part 19.
53. Having considered the seriousness of the violations cited in the Alleged Violations of Law, above, the economic benefit to Respondent, if any, resulting from the violations, the degree of culpability involved, any other penalty for the same violations, any history of prior violations, the economic impact of the penalty on the Respondent, and any other matters as justice may require, in accordance with section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), the Complainant has determined the civil administrative penalty amount agreed upon below is appropriate to settle this matter.

54. Respondent agrees to:
- a. pay a civil penalty in the amount of **\$19,500**, within 30 calendar days of date the final order approving this Agreement is filed with the Regional Hearing Clerk;
  - b. pay the civil penalty using any method provided on the website <https://www.epa.gov/financial/makepayment>;
  - c. indicate each and every payment is payable to “Oil Spill Liability Trust Fund-311” and identify each and every payment with the docket number that appears on the final order;
  - d. within 24 hours of payment, email proof of payment to Donna K. Inman, Environmental Scientist, EPA Region 8, at [Inman.DonnaK@epa.gov](mailto:Inman.DonnaK@epa.gov) (whom the complainant designates for service of proof of payment) and the Regional Hearing Clerk for EPA Region 8 at [R8\\_Hearing\\_Clerk@epa.gov](mailto:R8_Hearing_Clerk@epa.gov). “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order.
55. If Respondent fails to timely pay any portion of the penalty assessed under the final order approving this Agreement, EPA may:
- a. request the Attorney General to bring a civil action under section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H), in an appropriate district court to recover the amount assessed, plus interest at currently prevailing rates from the date of the final order, attorney’s fees and costs for collection proceedings, and a 20% quarterly nonpayment penalty for each quarter during which failure to pay persists;
  - b. refer the debt to a credit reporting agency or a collection agency under 40 C.F.R. §§ 13.13, 13.14, and 13.33;
  - c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, under 40 C.F.R. part 13, subparts C and H; and
  - d. suspend or revoke Respondent’s licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds under 40 C.F.R. § 13.17.
56. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.



57. This Agreement applies to Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Respondent must give written notice and a copy of this Agreement to any successors-in-interest prior to any transfer of any interest in the Site occurring prior to payment in full of the penalty referenced above. Any change in ownership or corporate control of Respondent, including but not limited to any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Agreement.
58. The undersigned representative of Respondent certifies he or she has authority to bind Respondent to this Agreement.
59. Except as qualified by paragraph 555, above, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

## **VII. EFFECT OF CONSENT AGREEMENT**

60. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondent's liability for federal civil penalties for the violations specifically alleged above.
61. The terms of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer or Regional Administrator.
62. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act, any regulation, order, or permit issued pursuant to the Act, and any other federal, state, or local laws, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
63. Nothing herein shall be construed to limit the power of EPA to pursue injunctive or other equitable relief, or criminal sanctions for any violations of law or to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
64. If and to the extent EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA, EPA reserves any and all of its legal and equitable rights.
65. The parties consent to service of the Final Order by e-mail at the following valid e-mail addresses: eakins.shaul@epa.gov (for Complainant), and sti2190@blackfoot.net and rparkin@bigskylawyers.com (for Respondent).

**VIII. EFFECTIVE DATE**

66. This Agreement shall become effective on the date the Final Order is filed by the hearing clerk.

Consent Agreement In the Matter of MORTON & COFFMAN, L. L. C., DBA Mountain View Cenex

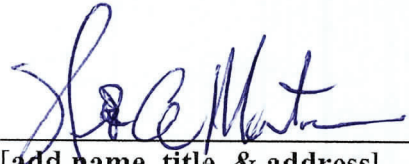
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8  
Complainant**

Date: \_\_\_\_\_

By: JANICE PEARSON Digitally signed by JANICE PEARSON  
Date: 2022.06.16 12:47:07 -06'00'  
Janice Pearson, Branch Chief  
RCRA and OPA Enforcement Branch

**MOTON & COFFMAN, L. L. C.,  
DBA Mountain View Cenex  
Respondent**

Date: 5-24-2022

By:  Partner  
[add name, title, & address]

STUART A. MORTON  
Box 396  
ST. IGNATIUS, MT.  
59868

**CERTIFICATE OF SERVICE**

The undersigned certifies that the attached **CONSENT AGREEMENT** and the **FINAL ORDER** in the matter of **MORTON & COFFMAN, LLC DBA MOUNTAIN VIEW CENEX; DOCKET NO.: CWA-08-2022-0007** were sent via certified receipt email on June 22, 2022, to:

Respondent

Rachel Parkin  
rparkin@bigskylawyers.com

EPA Region 8

Shaula Eakins  
Enforcement Attorney  
Office of Regional Counsel  
eakins.shaula@epa.gov

EPA Financial Center

Jessica Chalifoux  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
Chalifoux.Jessica@epa.gov

June 22, 2022

\_\_\_\_\_  
Kate Tribbett  
Acting Regional Hearing Clerk