



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6, 1201 ELM STREET, DALLAS, TEXAS 75270-2102

FILED

22 APR 20 PM 1:41

**EXPEDITED SPILL PREVENTION CONTROL AND COUNTERMEASURE
SETTLEMENT AGREEMENT**

REGIONAL HEARING CLERK
EPA REGION VI

In the matter of Don Clemishire Oil Corporation
(Respondent)
Docket No. CWA-06-2022-4302

On October 26, 2021, an authorized representative of the United States Environmental Protection Agency (EPA) conducted an inspection of Respondent's facility known as Acott Tank Battery, located off Red Eagle Road (CR 5230) in Hominy, Osage County, Oklahoma, to determine compliance with the Oil Pollution Prevention regulations promulgated at 40 CFR Part 112 under Section 311(j) of the Clean Water Act, as amended, (33 U.S.C. §1321(j)), (the "Act" or "CWA"). EPA determined that Respondent, as owner or operator of the facility, violated regulations implementing Section 311(j) of the Act by failing to comply with the Oil Pollution Prevention regulations as noted on the attached Spill Prevention Control and Countermeasure Plan (SPCC) Inspection Findings, Alleged Violations, and Proposed Penalty Form (Violations Form) which is hereby incorporated by reference. By its signature below, EPA ratifies the inspection findings and alleged violations set forth in the Violations Form.

The parties enter into this Expedited Settlement Agreement in order to settle the civil violations described in the Violations Form for a penalty of \$875. The parties are authorized to enter into this Expedited Settlement Agreement under the authority of Section 311(b) (6) (B) (i) of the Act, 33 U.S.C. §1321(b) (6) (B) (i), and by 40 C.F.R. § 22.13(b).

This settlement is subject to the following terms and conditions:

EPA finds the Respondent is subject to the Oil Pollution Prevention regulations and has violated the regulations as further described in the Violations Form. Respondent admits it is subject to the Oil Pollution Prevention regulations and that EPA has jurisdiction over Respondent and Respondent's conduct as described in the Violations Form. Respondent admits to the facts in the first paragraph of this Expedited Settlement Agreement and waives any objections it may have to

EPA's jurisdiction. Respondent consents to the assessment of the penalty stated above.

Respondent further certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the violations identified in the Violations Form have been corrected and the facility is now in full compliance with the Oil Pollution Prevention regulations (or that the violations will be corrected and the facility brought into full compliance with the Oil Pollution Prevention regulations within an alternative time frame agreed to by EPA in writing). Respondent, in accordance with the attached payment Instructions, shall provide payment of the civil penalty.

The payment made pursuant to this Expedited Settlement Agreement is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. §162(f), and, therefore, Respondent shall not claim it as a tax-deductible expenditure for purposes of federal, state or local law.

Upon signing and returning this Expedited Settlement Agreement to EPA, Respondent waives the opportunity for a hearing or appeal pursuant to Section 311 of the Act, and consents to EPA's approval of the Expedited Settlement Agreement without further notice. Moreover, in entering into this Expedited Settlement Agreement, the Respondent agrees to bear its own costs and attorney's fees related to this Agreement.

This Expedited Settlement Agreement is binding on the parties signing below and is effective upon filing with the Regional Hearing Clerk pursuant to 40 C.F.R. §22.31(b). The parties consent to service of this Expedited Settlement Agreement by e-mail at the following valid e-mail addresses:
smalley.bryant@epa.gov (for Complainant), and
donclemishire@yahoo.com (for Respondent).

Once the Expedited Settlement Agreement is signed by the Director, of the Enforcement and Compliance Assurance Division, the original Expedited Settlement

Agreement will be filed with the Regional Hearing Clerk and a copy will be mailed to: U.S. EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive (MS-WG32B), Cincinnati, OH 45268. A copy of the Expedited Settlement Agreement will also be mailed to the Respondent.

IT IS SO ORDERED:

Cheryl T. Seager
Digitally signed by CHERYL SEAGER
Date: 2022.04.19 16:08:42 -05'00'

Date: 4/19/2022

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

If Respondent does not sign and return this Expedited Settlement Agreement as presented within 30 days of the date of its receipt, or within an extension timeframe approved by the EPA, the proposed Expedited Settlement Agreement is withdrawn without prejudice to EPA's ability to file any other enforcement action for the violations identified in the Violations Form.

After this Expedited Settlement Agreement becomes effective, EPA will take no further civil penalty action against Respondent for the alleged violations of the Oil Pollution Prevention regulations described in the Violations Form through the order date of this Expedited Settlement Agreement. However, EPA does not waive any rights to take any enforcement action for any other past, present, or future violations by Respondent of the Oil Pollution Prevention regulations or of any other federal statute or regulations.

APPROVED BY EPA:

Bryant Smalley Date: 12/9/2021
Bryant Smalley
Chief
Water Enforcement Branch

APPROVED BY RESPONDENT:

Name (print): DEW CLEINSHIRE

Title (print): OWNER

Signature: *DCE* Date: 4-12-22

The estimated cost of the clean-up and corrective action is:

\$ 25000

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

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

Company Name
Don Clemishire Oil Corporation

Docket Number
CWA-06-2022-4302

Facility Name
Acott Tank Battery

Date
10/26/2021

Address
1830 North Booker Avenue

Facility ID Number
SPCC-OK-2022-00014

City
Hominy

Inspector's Name
Tom McKay

State OK **Zip Code** 74035

EPA Approving Official
Chris Perry

Contact
Don Clemishire - Owner

Enforcement Contact
Enoch Johnbull

Total Storage Capacity
28,434 gallons



**Summary of Findings
(Production Facilities)**

GENERAL TOPICS: 40 C.F.R 112.3(a), (d), (e); 112.5(a), (b), (c); 112.7 (a), (b), (c), (d)

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

- Plan does not discuss alternative environmental protection to SPCC requirements 112.7(a)(2) (\$225)
- Plan has inadequate or no facility diagram 112.7(a)(3) (\$100)
- Inadequate or no listing of type of oil and storage capacity layout of containers 112.7(a)(3)(i) (\$75)
- Inadequate or no discharge prevention measures 112.7(a)(3)(ii) (\$75)
- Inadequate or no description of drainage controls 112.7(a)(3)(iii) (\$75)
- Inadequate or no description of countermeasures for discharge discovery, response and cleanup 112.7(a)(3)(iv) (\$75)
- Recovered materials not disposed of in accordance with legal requirements 112.7(a)(3)(v) (\$75)
- No contact list & phone numbers for response & reporting discharges 112.7(a)(3)(vi) (\$75)
- Plan has inadequate or no information and procedures for reporting a discharge 112.7(a)(4) (\$125)
- Plan has inadequate or no description and procedures to use when a discharge may occur 112.7(a)(5) (\$175)
- Inadequate or no prediction of equipment failure which could result in discharges 112.7(b) (\$175)
- Plan does not discuss and facility does not implement appropriate containment/diversionary structures/equipment 112.7 (\$450)
- Inadequate containment or drainage for Loading Area- 112.7(c) (\$450)
- If claiming impracticability of containment and appropriate diversionary structures:**
- Impracticability has not been clearly denoted and demonstrated in plan 112.7(d) (\$125)
- No contingency plan 112.7(d)(1) (\$175)
- No written commitment of manpower, equipment, and materials 112.7(d)(2) (\$175)
- No periodic integrity and leak testing 112.7(d) (\$175)
- Plan has no or inadequate discussion of general requirements not already specified 112.7(j) (\$100)
- Plan does not include a signed copy of the Certification of the Applicability of the Substantial Harm Criteria per 40 CFR Part 112.20(e) (\$175)

QUALIFIED FACILITY REQUIREMENTS: 40 C.F.R. 112.6

- Qualified Facility: No Self certification 112.6(a) (\$500)
- Qualified Facility: Self certification lacks required elements 112.6(a) (\$125)
- Qualified Facility: Technical amendments not certified 112.6(b) (\$175)
- Qualified Facility: Qualified Facility Plan includes alternative measures not certified by licensed Professional Engineer 112.6(b) \$175
- Qualified Facility: Environmental Equivalence or Impracticability not certified by PE 112.6(d) (\$400)

WRITTEN PROCEDURES AND INSPECTION RECORDS: 40 C.F.R. 112.7(e)

- Plan does not include inspections and test procedures in accordance with 40 CFR Part 112.7(e) (\$100)
- Inspections and tests required are not in accordance with written procedures developed for the facility 112.7(e) (\$100)
- The plan has inadequate or no discussion of written procedures for inspection records 112.7(a)(1) (\$100)
- No Inspection records were available for review 112.7(e) (\$225)
(Written procedures and/or a record of inspections and/or customary business records)
- Inspection records are not signed by appropriate supervisor or inspector 112.7(e) (\$100)
- Inspection records are not maintained for three years 112.7(e) (\$100)

PERSONNEL TRAINING AND DISCHARGE PREVENTION PROCEDURES 112.7(f)

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

FACILITY TANK CAR AND TANK TRUCK LOADING/UNLOADING: 40 C.F.R. 112.7(c) and/or (h-j)

- Inadequate secondary containment, and/or rack drainage does not flow to catchment basin treatment system, or quick drainage system 112.7(h)(1) (\$850)
- Containment system does not hold at least the maximum capacity of the largest single compartment of any tank car or tank truck 112.7(h)(1) (\$525)
- There are no interlocked warning lights, or physical barrier system, or warning signs, or vehicle brake interlock system to prevent vehicular departure before complete disconnect from transfer lines- 112.7(h)(2) (\$350)
- There is no inspection of lowermost drains and all outlets prior to filling and departure of any tank car or tank truck- 112.7(h)(3) (\$175)
- Plan has inadequate or no discussion of facility tank car and tank truck loading/unloading rack 112.7(a)(1) (\$100)

QUALIFIED OIL OPERATIONAL EQUIPMENT: 40 C.F.R. 112.7(k)

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

OIL PRODUCTION FACILITY DRAINAGE: 40 C.F.R. 112.9(b)

- Drains for the secondary containment systems at tank batteries **and** separation **and** central treating areas are not closed and sealed at all times except when uncontaminated rainwater is being drained 112.9(b)(1) (\$700)
- Prior to the drainage of diked areas, rainwater is not inspected, valves opened and resealed under responsible supervision and records kept of such events 112.9(b)(1) (\$525)
- Accumulated oil on the rainwater is not removed and returned to storage or disposed of in accordance with legally approved methods 112.9(b)(1) (\$350)
- Field drainage system (e.g. drainage ditches and road ditches), oil traps, sumps, and/or skimmers are not regularly inspected and/or oil is not promptly removed 112.9(b)(2) (\$350)
- Inadequate or no records maintained for drainage events 112.9 (\$100)
- Plan has inadequate or no discussion of facility drainage 112.9 (\$100)

BULK STORAGE CONTAINERS: 40 C.F.R. 112.7(i) and 112.9(c)

- Plan has inadequate or no risk analysis and/or evaluation of field-constructed aboveground tanks for brittle fracture 112.7(i) (\$100)
- Failure to conduct evaluation of field-constructed aboveground tanks for brittle fracture 112.7(i) (\$350)
- Container material and construction of tanks not compatible to the oil stored and the conditions of storage such as pressure and temperature 112.9(c)(1) (\$525) \$525
- Size of secondary containment appears to be inadequate for containers and treating facilities 112.9(c)(2) (\$850)
- Drainage from undiked areas are not safely confined in a catchment basin or holding pond 112.9(c)(2) (\$450)
- Secondary containment materials are not sufficiently impervious to contain oil 112.9(c)(2) (\$425)
- Excessive vegetation which affects the integrity 112.9(c)(2) (\$175)
- Walls of containment system slightly eroded or have low areas which impact the containment sizing/ capacity requirements 112.9(c)(2) (\$350) \$350
- Visual inspections of containers, foundation and supports are not conducted periodically for deterioration and maintenance needs 112.9(c)(3) (\$525)
- Tank battery installations are not in accordance with good engineering practice because none of the following are present 112.9(c)(4) (\$525)
 - (1) Adequate tank capacity to prevent tank overflow 112.9(c)(4)(i), or
 - (2) Overflow equalizing lines between the tanks 112.9(c)(4)(ii), or
 - (3) Vacuum protection to prevent tank collapse 112.9(c)(4)(ii), or
 - (4) High level alarms to generate and transmit and alarm signal where facilities are part of a computer control system- 112.9(c)(4)(iv).
- Plan has inadequate or no discussion of bulk storage tanks- 112.7(a)(1) (\$100)

FACILITY TRANSFER OPERATIONS, PUMPING, AND FACILITY PROCESS: 40 C.F.R. 112.9(d) and 112.7

- Aboveground valves, piping and appurtenances are not inspected periodically on a scheduled basis for general condition (including items such as: flange joints, valve glands 2nd bodies, drip pans, pipeline supports, bleeder and gauge valves, polish rods/stuffing box).- 112.9(d)(1) (\$525)
- Brine and saltwater disposal facilities are not examined often- 112.9(d)(2) (\$525)
- Inadequate or no flowline maintenance program (includes: examination, corrosion protection, flowline replacement)- 112.9(d)(3) (\$525)
- Plan has inadequate or no discussion of oil production facilities- 112.7(a)(1) (\$100)
- Flowlines with no secondary containment need a contingency plan and written commitment of resources 112.9(d)(3) (\$300)
- Facility does not have a written flowline maintance program or it fails to meet or implement the requirements of 112.9(d)(4) \$300

SUB TOT/		\$875
Multiplier		1
Total		\$875

Docket No. CWA-06-2022-4302

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing "Consent Agreement and Final Order," issued pursuant to 40 C.F.R. 22.13(b), was filed on April 20, 2022, with the Regional Hearing Clerk, U.S. EPA Region 6, 1201 Elm Street, Suite 500, Dallas, TX 75270-2102; and that on the same date a copy of the same was sent to the following, in the manner specified below:

Copy Sent Via E-MAIL

NAME: Don Clemishire
ADDRESS: 1830 North Booker Avenue
Hominy, OK 74035

ENOCH
JOHNBULL

Digitally signed by
ENOCH JOHNBULL
Date: 2022.04.21
07:44:08 -05'00'

Enoch Johnbull
OPA Enforcement Officer