

COVICH-WILLIAMS CO., INC.

Seattle, Washington

Respondent.

**CONSENT AGREEMENT**

Proceedings Under Section 311(b)(6) of the  
Clean Water Act, 33 U.S.C. § 1321(b)(6)

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 311(b)(6) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6).

1.2. Pursuant to CWA Section 311(b)(6)(A), EPA is authorized to assess a civil penalty against any owner, operator, or person in charge of an onshore facility from which oil or a hazardous substance is discharged in violation of CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3), and/or who fails or refuses to comply with any regulation issued under CWA Section 311(j), 33 U.S.C. § 1321(j).

1.3. CWA Section 311(b)(6)(B), 33 U.S.C. § 1321(b)(6)(B), authorizes the administrative assessment of Class I civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to amendments to the Federal Civil Penalty Inflation Adjustment Act, 28 U.S.C. § 2461, and 40 C.F.R. Part 19, the administrative assessment of Class I civil penalties may not exceed \$19,505 per day for each day during which the violation continues, up to a maximum penalty of \$48,762. *See also* 85 Fed. Reg. 83820 (December 23, 2020) (2021 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Section 311(b)(6)(A) and (b)(6)(B), 33 U.S.C. § 1321(b)(6)(A) and (B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Covich-Williams Co., Inc. (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement.

## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to CWA Section 311(b)(6), 33 U.S.C. § 1321(b)(6), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (Complainant).

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CWA together with the specific provisions of the CWA and the implementing regulations that Respondent is alleged to have violated.

## **III. ALLEGATIONS**

### **Statutory and Regulatory Framework**

3.1. The objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

3.2. CWA Section 311(j), 33 U.S.C. § 1321(j), provides for the regulation of onshore facilities to prevent or contain discharges of oil. CWA Section 311(j)(1)(C), 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 . . . .”

3.3. 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) authority to issue the regulations referenced in the preceding Paragraph for non-transportation related onshore facilities.

3.4. Pursuant to these delegated statutory authorities and pursuant to its authorities under the CWA, 33 U.S.C. § 1251 *et seq.*, to implement Section 311(j), EPA promulgated the Oil Pollution Prevention regulations in 40 C.F.R. Part 112, which set forth procedures, methods and equipment and other requirements to prevent the discharge of oil from non-transportation-related onshore facilities into or upon the navigable waters of the United States or adjoining shorelines, including requirements for preparation and implementation of a Spill Prevention Control and Countermeasure (SPCC) Plan.

3.5. The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products, which due to their location, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines.

3.6. Further, under 40 C.F.R. Part 112, owners or operators of onshore facilities that have an aboveground storage capacity of more than 1,320 gallons of oil, and due to their location could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, must prepare a SPCC Plan in writing, certified by a licensed Professional Engineer, and in accordance with the requirements of 40 C.F.R. § 112.7.

3.7. A facility's SPCC Plan shall be prepared "in accordance with good engineering practices" and have the full approval of management with authority to commit the necessary resources to implement the plan. 40 C.F.R. § 112.7.

### **General Allegations**

3.8. Respondent is a corporation organized under the laws of the State of Washington, and is a "person" under CWA Sections 311(a)(7) and 502(5), 33 U.S.C. §§ 1321(a)(7), 1362(5), and 40 C.F.R. § 112.2.

3.9. At all times relevant to this Consent Agreement, Respondent was the "owner or operator," within the meaning of 40 C.F.R. § 112.2 and Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), of the facility located at 4800 20th Avenue N.W. and 5219 Shilshole Avenue N.W. in Seattle, Washington (Facility).

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

3.11. On September 19, 2018, authorized EPA representatives inspected the Facility to determine compliance with Section 311(j) of the Act, and in particular with the requirements of 40 C.F.R. Part 112.

3.12. At the time of the inspection, Respondent was engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products at the Facility, as described in 40 C.F.R. § 112.1(b).

3.13. At the time of the inspection, the Facility had an aboveground storage capacity of more than 1,320 gallons of oil.

3.14. Respondent developed one version of its SPCC Plan that is relevant to the alleged violations. The relevant version of the SPCC Plan was dated October 2015 (SPCC Plan).

3.15. The Facility is located adjacent to the Lake Washington Ship Canal, which flows to Puget Sound. Lake Washington Ship Canal and the Puget Sound are each a "navigable water"

within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

3.16. Respondent is the owner or operator of an onshore facility that has an aboveground storage capacity of more than 1,320 gallons of oil, and due to its location could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines. Respondent is therefore subject to the requirements of 40 C.F.R. Part 112.

3.17. Under 40 C.F.R. § 112.3, the owner or operator of an SPCC-regulated facility that was in operation on or before August 1, 2002, shall have prepared and implemented a written SPCC Plan that complies with 40 C.F.R. § 112.3 and other applicable sections of 40 C.F.R. Part 112.

3.18. The Facility began operating before August 16, 2002.

### **Violations**

#### **Count 1: Failure to Amend SPCC Plan**

3.19. 40 C.F.R. § 112.5(a) requires an owner or operator to “[a]mend the SPCC Plan for [the] facility . . . when there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge. . . .” 40 C.F.R. § 112.5(b) requires the owner or operator to “complete a review and evaluation of the SPCC Plan at least once every five years” and “amend [the] SPCC Plan within six months of the review.” 40 C.F.R. § 112.5(c) requires the owner or operator to “have a Professional Engineer certify any technical amendments to [the] Plan. . . .”

3.20. Changes were made to the Facility that materially affected its potential for a discharge, including high level alarm installations on two dock tanks; added secondary containment to warehouse exterior tank farm; and the addition of a valve to the exterior tank farm alley storm drain. At the time of EPA’s inspection, Respondent had not amended its SPCC Plan or had a Professional Engineer certify any amendments to its Plan. Respondent therefore

failed to evaluate, review, and amend its SPCC Plan, and have it certified by a Professional Engineer, in violation of 40 C.F.R. § 112.5(a)-(c).

Count 2: Failure to Fully Document Facility Layout in SPCC Plan

3.21. 40 C.F.R. § 112.7(a)(3) requires the owner or operator to “[d]escribe in [the] Plan the physical layout of the facility and include a facility diagram, which must mark the location and contents of each fixed oil storage container and the storage area where mobile or portable containers are located. The facility diagram must identify the location of and mark as ‘exempt’ underground tanks that are otherwise exempted from the requirements of this part under § 112.1(d)(4). The facility diagram must also include all transfer stations and connecting pipes. . . .” The SPCC Plan must also address “[d]ischarge prevention measures . . .” and “[d]ischarge or drainage controls such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge . . .”

3.22. At the time of EPA’s inspection, Respondent’s SPCC Plan and facility diagram failed to address piping in the alley area outside secondary containment and three transfer areas. Respondent had also failed to include the warehouse facility on the facility diagram. Respondent therefore violated 40 C.F.R. § 112.7(a)(3).

Count 3: Failure to Include Prediction Evaluations

3.23. 40 C.F.R. § 112.7(b) provides that, “[w]here experience indicates a reasonable potential for equipment failure (such as loading or unloading equipment, tank overflow, rupture, or leakage, or any other equipment known to be a source of a discharge), include in [the] Plan a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure.”

3.24. At the time of EPA’s inspection, Respondent’s SPCC Plan failed to include prediction evaluations for at least five separate areas at the Facility that all had a reasonable potential for equipment failure. Respondent therefore violated 40 C.F.R. § 112.7(b).

#### Count 4: Failure to Provide Appropriate Containment

3.25. 40 C.F.R. § 112.7(c) requires the owner or operator to “[p]rovide appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in 40 C.F.R. § 112.1(b). . . . The entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary containment system, such as a tank, will not escape the containment system before cleanup occurs.”

3.26. At the time of EPA’s inspection, the inspector observed a doorway in the warehouse exterior tank farm’s secondary containment/building wall, thereby preventing the entire containment system from containing oil. Respondent therefore failed to provide appropriate containment in violation of 40 C.F.R. § 112.7(c).

#### Count 5: Failure to Conduct Adequate Inspections or Tests

3.27. 40 C.F.R. § 112.7(e) requires the owner or operator to “[c]onduct inspections and tests required by this part in accordance with written procedures that [the facility] or the certifying engineer develop for the facility. [The facility] must keep these written procedures and a record of the inspections and tests, signed by the appropriate supervisor or inspector, with the SPCC Plan for a period of three years.”

3.28. At the time of EPA’s inspection, the facility representative was unable to produce any written procedures that described how the Facility conducts inspections or tests. Respondent therefore failed to conduct adequate inspections and tests in violation of 40 C.F.R. § 112.7(e).

#### Count 6: Failure to Conduct or Document Training

3.29. 40 C.F.R. § 112.7(f) requires the owner or operator 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; [d]esignate a person at each applicable

facility who is accountable for discharge prevention and who reports to facility management; [and] [s]chedule and conduct discharge prevention briefings for . . . oil-handling personnel at least once a year to assure adequate understanding of the SPCC Plan for that facility. Such briefings must highlight and describe known discharges as described in 40 C.F.R. § 112.1(b) or failures, malfunctioning components, and any recently developed precautionary measures.”

3.30. At the time of EPA’s inspection, Respondent’s SPCC Plan contained a discussion about annual training and required the Facility to maintain records of annual training. However, at the time of EPA’s inspection, the facility representative was unable to provide any documentation of any training. Respondent therefore failed to adequately conduct or document training in violation of 40 C.F.R. § 112.7(f).

Count 7: Failure to Record Bypass Events

3.31. 40 C.F.R. § 112.8(c)(3) provides that the owner or operator must not “allow drainage of uncontaminated rainwater from the diked area into a storm drain or discharge of an effluent into an open watercourse, lake, or pond, bypassing the facility treatment system unless [the facility] (i) [n]ormally keep the bypass valve sealed closed; (ii) [i]nspect the retained rainwater to ensure that its presence will not cause a discharge as described in 40 C.F.R. § 112.1(b); (iii) [o]pen the bypass valve and reseal it following drainage under responsible supervision; and (iv) [k]eep adequate records of such events. . . .”

3.32. At the time of EPA’s inspection, Respondent’s SPCC Plan described how rainwater from the Facility is directed to two oil/water separator tanks, one of which catches surface runoff water flowing towards the ship canal, as well as drainage from the Facility’s fueling station catchment trays. After runoff water is separated from oil products, the runoff water is released into the City of Seattle’s wastewater system. The other tank catches runoff water that has accumulated on oil barrels catches rain runoff from catch basins and is then

separated before being released into the City of Seattle’s wastewater system. Respondent failed to keep adequate records of those events. Respondent therefore violated 40 C.F.R. § 112.8(c)(3).

Count 8: Failure to Test or Inspect Aboveground Containers

3.33. 40 C.F.R. § 112.8(c)(6) requires the owner or operator to “[t]est or inspect each aboveground container for integrity on a regular schedule and whenever you make material repairs. [The facility] must determine, in accordance with industry standards, the appropriate qualifications for personnel performing tests and inspections, the frequency and type of testing and inspections, which take into account container size, configuration, and design (such as containers that are: shop-built, field-erected, skid-mounted, elevated, equipped with a liner, double-walled, or partially buried). . . . [The facility] must keep comparison records and you must also inspect the container's supports and foundations. In addition, [the facility] must frequently inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. Records of inspections and tests kept under usual and customary business practices satisfy the recordkeeping requirements of this paragraph.”

3.34. External inspections commissioned by Respondent identified the need for inspections of four aboveground containers. However, at the time of EPA’s inspection, Respondent was unable to produce records demonstrating that these four containers were inspected in compliance with industry standards, and the SPCC Plan failed to provide a schedule for their inspection. Respondent therefore violated 40 C.F.R. § 112.8(c)(6).

Count 9: Failure to Warn Vehicles

3.35. 40 C.F.R. § 112.8(d)(5) requires the owner or operator to “[w]arn all vehicles entering the facility to be sure that no vehicle will endanger aboveground piping or other oil transfer operations.”

3.36. At the time of EPA’s inspection, the inspector did not observe any warning signs, nor did the inspector observe personnel warning trucks when they parked in the driving lanes of

Ballard Avenue during fuel transfer operations. Additionally, the SPCC Plan failed to describe the warning process. Respondent therefore failed to adequately warn vehicles in violation of 40 C.F.R. § 112.8(d)(5).

3.37. Respondent's failure to comply with the requirements of 40 C.F.R. Part 112 subjects it to civil penalties pursuant to Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i).

#### **IV. TERMS OF SETTLEMENT**

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by CWA Section 311(b)(8), 33 U.S.C. § 1321(b)(8), EPA has taken into account the seriousness of the alleged violations; Respondent's economic benefit of noncompliance; the degree of culpability involved; any other penalty for the same incident; any history of prior violations; the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge; the economic impact of the penalty on the violator; and any other matters as justice may require. After considering all of these factors, EPA has determined that an appropriate penalty to settle this action is \$13,000.

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3 and agrees to pay the total civil penalty within 30 days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check

or certified check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 4.5, on the Regional Hearing Clerk and EPA Region 10

Compliance Officer at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 11-C07  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
R10\_RHC@epa.gov

Robert Grandinetti  
U.S. Environmental Protection Agency  
Region 10, Mail Code: Hanford  
825 Jadwin Avenue, Suite 210  
Richland, Washington 99352  
grandinetti.robert@epa.gov

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement and the Final Order in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

a. Interest. Pursuant to CWA Section 311(b)(6)(H), 33 U.S.C.

§ 1321(b)(6)(H), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order provided, however, that no interest shall be payable on

any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7 above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III above.

4.11. Except as described in Subparagraph 4.7.b, above, each party shall bear its own costs in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

2/22/21

FOR RESPONDENT:



ROBERT WILLIAMS, Manager  
Covich-Williams Co., Inc.

DATED:

\_\_\_\_\_

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director  
Enforcement and Compliance Assurance Division  
EPA Region 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

COVICH-WILLIAMS CO., INC.

Seattle, Washington

Respondent.

DOCKET NO. CWA-10-2021-0053

**FINAL ORDER**

Proceedings Under Section 311(b)(6) of the  
Clean Water Act, 33 U.S.C. § 1321(b)(6)

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.

2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act (CWA) for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

4. This Final Order shall become effective upon filing.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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RICHARD MEDNICK  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER In the Matter of: COVICH-WILLIAMS CO., INC., DOCKET NO.: CWA-10-2021-0053** was served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was emailed to:

Patrick B. Johnson, Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 11-C07  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
(206) 553-6905  
johnson.patrick@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was emailed to:

Robert Williams, Manager  
Covich-Williams Co., Inc.  
4800 20th Avenue N.W.  
Seattle, Washington 98107  
(206) 784-0171  
Bob@covichwilliams.com

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Teresa Young  
Regional Hearing Clerk  
EPA Region 10