



August 2, 2021

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

7:53 AM

1595 WYNKOOP STREET  
DENVER, CO 80202-1129  
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Received by  
EPA Region VIII  
Hearing Clerk

DOCKET NO.: CWA-08-2021-0016

IN THE MATTER OF:	)	
	)	
PHOENIX PETROLEUM, LLC	)	FINAL ORDER
(formerly Condor Petroleum Company, LLC)	)	
	)	
	)	
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, which shall become effective 30 days after issuance of this Final Order.

SO ORDERED THIS 2nd DAY OF August, 2021.

KATHERIN  
HALL

Digitally signed by  
KATHERIN HALL  
Date: 2021.08.02 07:48:46  
-06'00'

Katherin E. Hall  
Regional Judicial Officer

August 2, 2021

7:53 AM

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

Received by  
EPA Region VIII  
Hearing Clerk

IN THE MATTER OF: )

Phoenix Petroleum, LLC )  
(formerly Condor Petroleum Company, LLC), )

Respondent )

**CONSENT AGREEMENT**

Docket No. CWA-08-2021-0016

**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 Phoenix Petroleum, LLC (Respondent).
3. Respondent owns and/or operates a facility known as the AB Ericson 1-A Tank Battery (the Ericson Facility), with two production wells and a tank battery, located at NENE S3 T160 R95 in Divide County, North Dakota.
4. Respondent also owns and/or operates a facility known as the Arlo Moberg 3 Tank Battery (the Moberg Facility), with a production well and tank battery, located at NENW S19 T159 R94 in Burke County, North Dakota.
5. The Ericson Facility and the Moberg Facility will sometimes be referenced together as each Facility or as the Facilities, as the context requires.
6. 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**

7. 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). This is a Class II proceeding, as described in section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii).

8. This proceeding is subject to the Consolidated Rules of Practice, under which this proceeding may be resolved by a final order from EPA Region 8's Regional Judicial Officer or Regional Administrator ratifying this Agreement. The final order will simultaneously commence and conclude this proceeding. 40 C.F.R. § 22.13(b).

### **III. GOVERNING LAW**

9. The objective of the Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. 33 U.S.C. § 1251(a).
10. In 1972, Congress directed the President to issue regulations (a) establishing procedures for preventing and containing discharges of oil from onshore facilities and (b) determining those quantities of oil the discharge of which may be harmful to the public health or welfare or the environment of the United States. 33 U.S.C. §§ 1321(b)(4) and 1321(j)(1)(C). The President subsequently delegated the authority to issue these regulations to the EPA.
11. In response to the directive and delegation referenced above, the EPA promulgated 40 C.F.R. part 112, subparts A through C. These regulations are referenced as the "Spill Prevention Control and Countermeasure Regulations" or "SPCC Regulations."
12. The SPCC Regulations apply to owners and operators of non-transportation-related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil and oil products, which, due to their location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in 40 C.F.R. § 110.3, into or upon the navigable waters of the United States or adjoining shorelines. 40 C.F.R. § 112.1.
13. Quantities of oil that may be harmful include discharges that: (a) violate applicable water quality standards, (b) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or (c) cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines. 40 C.F.R. § 110.3.
14. The SPCC Regulations require regulated facilities to prepare and implement plans, known as SPCC Plans, to prevent discharges of oil in harmful quantities into navigable waters and to adhere to certain practices to prevent and contain oil discharges.

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

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

15. Respondent is a Colorado limited liability company. Its registered agent for service of process in North Dakota is Joann Klevenberg, 417 2<sup>nd</sup> St. NE, Tioga, North Dakota, 58852. According to Articles of Amendment filed with the Colorado Secretary of State on January 18, 2019, the former name for Respondent was Condor Petroleum Company, LLC.

16. 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. § 112.2.
17. Respondent is engaged in the business of oil and gas production.
18. At each Facility Respondent stores oil.
19. The Ericson Facility has an aboveground oil storage capacity of approximately 1,200 barrels, or 50,400 gallons.
20. The Ericson Facility began operations in 1972.
21. The Moberg Facility has an aboveground oil storage capacity of approximately 1,600 barrels, or 67,200 gallons.
22. The Moberg Facility began operations in 1995.
23. Each Facility is in the Lake Sakakawea watershed.
24. In the event of an uncontained spill from the Ericson Facility, oil from that Facility would flow 780 feet southeast to a wetland, which after 2,500 feet drains into Norman Lake. From Norman Lake, it would drain south to a series of wetlands. From at least one of these wetlands, it would flow to a defined conveyance that flows for approximately 3.5 miles to White Earth Creek. It would then flow approximately 12 miles along White Earth Creek to the White Earth River.
25. Norman Lake is a U.S. Fish and Wildlife Service Waterfowl Protection Area (WPAs). WPAs are part of the National Wildlife Refuge System. WPAs serve to protect wetlands and grasslands for waterfowl.
26. In the event of an uncontained spill from the Moberg Facility, oil from that Facility would flow 650 feet to White Earth Creek. It would then flow approximately 11 miles along White Earth Creek to the White Earth River.
27. White Earth Creek is at least an intermittent tributary of the White Earth River
28. The White Earth River is a perennial or relatively permanent tributary of Lake Sakakawea.
29. Lake Sakakawea is an impoundment of the Missouri River.
30. The Missouri River is an interstate, traditionally navigable water.
31. White Earth 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 (1993).
32. The White Earth 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 (1993).

33. Lake Sakakawea 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 (1993).
34. The Missouri 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 (1993).
35. Due to its location, the Ericson Facility could reasonably be expected to discharge oil and/or other pollutants to White Earth 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.
36. Due to its location, the Ericson Facility could reasonably be expected to discharge oil and/or other pollutants to the White Earth 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.
37. Due to its location, the Moberg Facility could reasonably be expected to discharge oil and/or other pollutants to White Earth 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.
38. Due to its location, the Moberg Facility could reasonably be expected to discharge oil and/or other pollutants to the White Earth 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.
39. Each Facility is an “onshore facility” as that term is defined in section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).
40. Each Facility is a “non-transportation related” facility as that term is defined in 40 C.F.R. § 112.2.
41. Respondent is an “owner or operator” of each Facility as that term is defined in section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6).
42. Each Facility is subject to the SPCC Regulations.

### **Ericson Facility Inspection**

43. On October 6, 2015, EPA representatives conducted an inspection of the Ericson Facility to investigate compliance with the SPCC Regulations.
44. During the EPA's inspection of the Ericson Facility referenced in paragraph 43, above, Respondent provided the EPA with (a) a site-specific SPCC plan dated August 13, 2014, for the Ericson Facility and (b) a Multifacility Plan Supplement dated July 23, 2015, which encompassed the Ericson Facility and other facilities in North Dakota.
45. During its inspection of the Ericson Facility, the EPA initially noted the following deficiencies in the SPCC plan for that facility (with relevant regulatory requirements cited in parentheses):
  - (a) Facility Diagrams. The site-specific plan's diagram of the Facility was incomplete. For example, it stated incorrectly that the Holte 2 well flows to the Facility's tank battery and that there were no brine transfer lines at the Facility. The Facility diagram did not show the incoming well lines and the produced water transfer line from the heater treater to a salt water disposal component. A table in the plan also showed a brine tank that was not present. (40 C.F.R. § 112.7(a)(3).)
  - (b) Listing Oil Type and Container Capacity. The site-specific plan did not completely list the types of oil at the Facility or the storage capacity of the Facility's containers. In addition, the site-specific plan indicated there produced water tanks at the Facility, which was not the case. (40 C.F.R. § 112.7(a)(3)(i).)
  - (c) Procedures for Reporting Discharges. The multi-facility plan did not include adequate procedures for reporting discharges. (40 C.F.R. § 112.7(a)(4). This was inadvertently identified at the time of the inspection as also being a field deficiency.)
  - (d) Flowline/Intra-Facility Gathering Line Maintenance Program. The multi-facility plan did not describe what material the pipelines were made of and whether it was compatible with the production fluids being transported. (40 C.F.R. § 112.9(d)(4)(i).)
  - (e) Removing and Stabilizing Oil Discharges. The multi-facility plan did not discuss removing and stabilizing any oil discharge from the pipelines. (40 C.F.R. § 112.9(d)(4)(iv).)
46. During its inspection of the Ericson Facility, the EPA initially noted the following field implementation deficiencies (with relevant regulatory requirements cited in parentheses):
  - (a) Facility Diagrams. The conditions in the field did not reflect the diagrams in the Facility's site-specific SPCC plan, as indicated above. (40 C.F.R. § 112.7(a)(3).)

- (b) Listing Oil Type and Container Capacity. The types of oil stored at the Facility did not reflect the description in the site-specific plan, as indicated above. (40 C.F.R. § 112.7(a)(3)(i).)
- (c) Drainage Controls. Drainage controls in the field did not match what was described in the plan. (40 C.F.R. § 112.7(a)(3)(iii).)
- (d) Secondary Containment. Secondary containment was not adequate. Soil was not properly compacted. Vegetation was growing inside the secondary containment, presenting the potential for roots to compromise the integrity of the containment structure. The secondary containment berm had low areas, which would decrease the storage capacity of the secondary containment structure. For the bulk storage containers and piping and related appurtenances, secondary containment was inadequate. (40 C.F.R. § 112.7(c).)
- (e) Inspections and Inspection Records. Inspections were not conducted in accordance with written procedures in the SPCC plan. In addition, records of inspections were not being maintained for three years. Although there were records for 2012, 2013, and September of 2015, there were no records for 2014 or for January through August of 2015. (40 C.F.R. § 112.7(e).)
- (f) Training on Discharge Prevention. There were inadequate records of oil-handling personnel having been trained on preventing discharges. For 2015, there were records of training for only the field manager and the pumper. For previous years, there were no training records. (40 C.F.R. § 112.7(f)(1).)
- (g) Spill Prevention Briefings. Spill prevention briefings were not being conducted at least annually. (40 C.F.R. § 112.7(f)(3).)
- (h) Removing Oil Accumulations. Oil accumulations were not being promptly removed. For example, a bank known as Center Tank 1 was leaking around the bottom. An uninsulated oil tank labeled as “Brine” on diagram) was leaking at its base and at a valve. Crude Oil Tank #2 was leaking at its base. (40 C.F.R. § 112.9(b)(2).)
- (i) Compatibility with Container Materials and Conditions of Storage. The material and construction of the containers were not compatible with the material stored and conditions of storage, as evidenced by visible leakage. (40 C.F.R. § 112.9(c)(1).)
- (j) Sizing for Secondary Containment. Secondary containment was inadequate to hold the capacity of the largest single container with sufficient freeboard for precipitation. (40 C.F.R. § 112.9(c)(2). This was inadvertently listed as also being a plan deficiency in the list of deficiencies noted during the inspection.)

- (k) Regular Visual Inspections. Containers were not being visually inspected regularly for deterioration and maintenance needs, as indicated by the leakage described above with reference to removing oil accumulations. (40 C.F.R. § 112.9(c)(3).)
  - (l) Aboveground Valves and Piping Associated with Transfer Operations. Facility pipe supports were not being inspected periodically and upon a regular schedule to determine their condition. (40 C.F.R. § 112.9(d)(1).)
  - (m) Flowline/Intra-Facility Gathering Line Maintenance Program. The flowlines and intra-facility gathering lines and associated equipment were not compatible with the types of production fluids, their potential corrosivity, volume, pressure, and other conditions, they were not being regularly inspected or repaired, and actions were not being taken to stabilize or remediate oil accumulation. (40 C.F.R. § 112.9(d)(4).)
47. During its inspection of the Ericson Facility, the EPA provided Respondent with a list of the deficiencies listed in paragraphs 45 and 46, above.
48. In submittals dated December 2015, June 2020, and January 2021, Respondent provided the EPA with documentation it had corrected the deficiencies cited in paragraphs 45 and 46, above.

#### **Moberg Facility Inspection**

49. On October 7, 2015, EPA representatives conducted an inspection of the Moberg Facility to investigate compliance with the SPCC Regulations.
50. After the EPA's inspection of the Moberg Facility referenced in paragraph 49, above, Respondent provided the EPA with a site-specific SPCC plan for that facility dated August 12, 2014, which the EPA reviewed on October 17, 2015. The Moberg Facility was covered by the same multi-facility plan as the Ericson Facility.
51. On October 27, 2015, the EPA initially noted the following deficiencies in the multi-facility plan for the Moberg Facility (with the relevant regulatory requirements cited in parentheses):
- (a) Procedures for Reporting Discharges. The multi-facility plan did not include adequate procedures for reporting discharges. (40 C.F.R. § 112.7(a)(4). This was inadvertently identified at the time of the inspection as also being a field deficiency.)
  - (b) Flowline/Intra-Facility Gathering Line Maintenance Program. The multi-facility plan did not describe what material the pipelines were made of and whether it was compatible with the production fluids being transported. (40 C.F.R. § 112.9(d)(4)(i).)



- (c) Removing and Stabilizing Oil Discharges. The multi-facility plan did not discuss removing and stabilizing any oil discharge from the pipelines. (40 C.F.R. § 112.9(d)(4)(iv).)
52. During its inspection of the Moberg Facility, the EPA initially noted the following field implementation deficiencies (with relevant regulatory requirements cited in parentheses):
- (a) Countermeasures for Discharge Discovery, Response, and Cleanup. Adequate countermeasures for discovering, responding to, and cleaning up discharges were not in place, as evidenced by multiple oil leaks observed during the inspection and by compromised tank stability. (40 C.F.R. § 112.7(a)(3)(iv). This was initially inadvertently noted as a deficiency under 40 C.F.R. § 112.7(a)(3)(iii).)
- (b) Inadequate Containment. Containment or diversionary structures onsite were inadequate to prevent a discharge. Soil was not properly compacted. Vegetation was growing inside a secondary containment berm around the separator and tanks, presenting the possibility of roots growing and compromising the berms' integrity. (40 C.F.R. § 112.7(c).)
- (c) Inspection Records. Although there were records for 2012, 2013, and September of 2015, there were no records for 2014 or for January through August of 2015. (40 C.F.R. § 112.7(e).)
- (d) Training on Discharge Prevention. The facility had no records of employee training. (40 C.F.R. § 112.7(f)(1).)
- (e) Annual Spill Prevention Briefings. The facility had no records of annual employee briefings. (40 C.F.R. § 112.7(f)(3).)
- (f) Removing Oil Accumulations. Oil tank #1 had leaks at its base near the manway, on its northeast side, and from the manway seal between its metal plates. Brine tank #1 was burping oil, and oil was running down the side of the tank. (40 C.F.R. § 112.9(b)(2).)
- (g) Inadequately Sized Secondary Containment. The secondary containment berm was low on the northeast corner near the heater treater and adjacent to the produced water loadout area. The berm was neither properly compacted nor sufficiently impervious. (40 C.F.R. § 112.9(c)(2).)
- (h) Regular Visual Inspections. Containers were not being visually inspected regularly for deterioration and maintenance needs, as indicated by the leakage described above (with reference to removing oil accumulations), the existence of low spots and vegetation in a secondary containment area, and the fact that Oil tank #2 had shifted several inches from its chine. (40 C.F.R. § 112.9(c)(3).)

- (i) Aboveground Valves and Piping. Aboveground valves and piping associated with transfer operations were not being inspected regularly, as evidenced by a steady drip occurring from the valve for the crude loadout, a history of overflows from the drip pot, buried pipelines having surfaced, pipelines having become bowed, and a section of pipeline having been gnawed by animal(s). (40 C.F.R. § 112.9(d)(1).)
  - (j) Flowline/Intra-Facility Gathering Line Maintenance Program. The flowlines and intra-facility gathering lines and associated equipment were not being regularly inspected or repaired. (40 C.F.R. § 112.9(d)(4).)
53. On October 27, 2015, the EPA provided Respondent with a list of the deficiencies listed in paragraphs 51 and 52, above.
54. In submittals dated December 2015, June 2020, and January 2021, Respondent provided the EPA with documentation it had corrected the deficiencies cited in paragraphs 51 and 52, above.

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

The alleged violations are set forth in the following counts:

### **Count 1: Failure to Prepare an Adequate SPCC Plan: Ericson Facility**

55. Respondent is required to prepare an SPCC plan for the Ericson Facility in accordance with the requirements of 40 C.F.R. part 112.
56. As further described in paragraph 45, above, Respondent's SPCC plan for the Ericson Facility as of the time of the EPA's inspection referenced above failed to comply with the following requirements:
- (a) 40 C.F.R. § 112.7(a)(3), due to inadequately describing and diagramming the Ericson Facility;
  - (b) 40 C.F.R. § 112.7(a)(3)(i), due to inadequately describing the type of oil at the Facility and the storage capacity of its containers;
  - (c) 40 C.F.R. § 112.7(a)(4), due to failing to include adequate procedures for reporting discharges;
  - (d) 40 C.F.R. § 112.9(d)(4)(i), due to failing to describe an adequate flowline and intra-facility gathering line maintenance program; and
  - (e) 40 C.F.R. § 112.9(d)(4)(iv), due to inadequately discussing the removal and stabilization of any oil discharge from any pipelines.

57. As of January of 2021, Respondent had provided the EPA with documentation of having corrected the SPCC plan violations cited in paragraph 56, above.
58. Respondent's failures to comply with the SPCC regulations, as detailed in paragraphs 45, 56, and 57, above, constitute violations of 40 C.F.R. §§ 112.7(a)(3), 112.7(a)(3)(i), 112.7(a)(4), 112.9(d)(4)(i), and 112.9(d)(4)(iv).

**Count 2: Failure to Implement SPCC Requirements in the Field: Ericson Facility**

59. Respondent is required to implement the SPCC requirements of 40 C.F.R. part 112 at the Ericson Facility.
60. As further described in paragraph 46, above, Respondent failed to comply with the following SPCC field implementation requirements at the Ericson Facility:
- (a) 40 C.F.R. § 112.7(a)(3), due to location and contents of tanks at the facility not matching the description in the relevant SPCC plan;
  - (b) 40 C.F.R. § 112.7(a)(3)(i), due to type of oil and storage capacities of on-site containers not matching the description in the relevant SPCC plan;
  - (c) 40 C.F.R. § 112.7(a)(3)(iii), due to the drainage controls in the field not matching the description in the relevant SPCC plan;
  - (d) 40 C.F.R. § 112.7(c), due to inadequate secondary containment;
  - (e) 40 C.F.R. § 112.7(e), due to failing to conduct inspections according to procedures in the SPCC plan and failing to maintain records of inspections for three years;
  - (f) 40 C.F.R. § 112.7(f)(1), due to inadequate records of training;
  - (g) 40 C.F.R. § 112.7(f)(3), due to failing to conduct spill prevention briefings at least annually;
  - (h) 40 C.F.R. § 112.9(b)(2), due to oil accumulations not being promptly removed;
  - (i) 40 C.F.R. § 112.9(c)(2), due to inadequately sized or maintained secondary containment;
  - (j) 40 C.F.R. § 112.9(c)(3), due to containers not being visually inspected regularly;
  - (k) 40 C.F.R. § 112.9(d)(1), due to facility pipe supports not being inspected periodically and on a regular schedule to determine their condition; and

- (l) 40 C.F.R. § 112.9(d)(4), due to flowlines and intra-facility gathering lines and associated equipment not being compatible with the type of production fluids, their potential corrosivity, volume, pressure, and other conditions, and not being regularly inspected or repaired.
61. As of January of 2021, Respondent had provided the EPA with documentation of having corrected the SPCC implementation violations cited in paragraph 60, above.
62. Respondent's failures to comply with the SPCC regulations, as detailed in paragraphs 46, 60, and 61, above, constitute violations of 40 C.F.R. §§ 112.7(a)(3), 112.7(a)(i), 112.7(a)(iii), 112.7(c), 112.7(e), 112.7(f)(1), 112.7(f)(3), 112.9(b)(2), 112.9(c)(2), 112.9(c)(3), 112.9(d)(1), and 112.9(d)(4).

**Count 3: Failure to Prepare an Adequate SPCC Plan: Moberg Facility**

63. Respondent is required to prepare an SPCC plan for the Moberg Facility in accordance with the requirements of 40 C.F.R. part 112.
64. Respondent's SPCC plan for the Moberg Facility as of the time of the EPA's post-inspection review referenced in paragraph 50, above, failed to comply with the following requirements:
- (a) 40 C.F.R. § 112.7(a)(4), due to failing to include adequate procedures for reporting discharges;
  - (b) 40 C.F.R. § 112.9(d)(4)(i), due to failing to describe an adequate flowline and intra-facility gathering line maintenance program; and
  - (c) 40 C.F.R. § 112.9(d)(4)(iv), due to inadequate discussion of removal and stabilization of any oil discharge from any pipelines.
65. As of June 2020, Respondent had provided the EPA with documentation of having corrected the SPCC plan violations cited in paragraph 64, above.
66. Respondent's failures to comply with the SPCC regulations, as detailed in paragraphs 64 and 65, above, constitute violations of 40 C.F.R. §§ 112.7(a)(4), 112.9(d)(4)(i), and 112.9(d)(4)(iv).

**Count 4: Failure to Implement SPCC Requirements in the Field: Moberg Facility**

67. Respondent is required to implement the SPCC requirements of 40 C.F.R. part 112 at the Moberg Facility.
68. As further described in paragraph 52, above, Respondent failed to comply with the following SPCC field implementation requirements at the Moberg Facility:
- (a) 40 C.F.R. § 112.7(a)(3)(iv), due to failing to have undertaken countermeasures to discover, respond to, and clean up discharges;

- (b) 40 C.F.R. § 112.7(c), due to inadequate secondary containment;
  - (c) 40 C.F.R. § 112.7(e), due to failing to conduct inspections according to procedures in the SPCC plan and failing to maintain records of inspections for three years;
  - (d) 40 C.F.R. § 112.7(f)(1), due to failing to maintain adequate records of training;
  - (e) 40 C.F.R. § 112.7(f)(3), due to failing to conduct spill prevention briefings at least annually;
  - (f) 40 C.F.R. § 112.9(b)(2), due to failing to remove oil accumulations promptly;
  - (g) 40 C.F.R. § 112.9(c)(2), due to inadequately sized or maintained secondary containment;
  - (h) 40 C.F.R. § 112.9(c)(3), due to failing to visually inspect containers regularly and failing to repair them following leakage and corrosion;
  - (i) 40 C.F.R. § 112.9(d)(1), due to failing to inspect facility pipe supports periodically and on a regular schedule to determine their condition; and
  - (j) 40 C.F.R. § 112.9(d)(4)(ii), due to failing to visually inspect, test, and repair flowlines and intra-facility gathering lines and associated appurtenances on a periodic and regular schedule for leaks, oil discharges, corrosion, or other conditions that could lead to a discharge as described in 40 C.F.R. § 112.1(b).
69. As of January of 2021, Respondent had provided the EPA with documentation of having corrected the SPCC implementation violations cited in paragraph 68, above.
70. Respondent's failures to comply with the SPCC regulations, as detailed in paragraphs 52, 68, and 69, above, constitute violations of 40 C.F.R. §§ 112.7(a)(3)(iv), 112.7(c), 112.7(e), 112.7(f)(1), 112.7(f)(3), 112.9(b)(2), 112.9(c)(2), 112.9(c)(3), 112.9(d)(1), and 112.9(d)(4).

## **VI. TERMS OF CONSENT AGREEMENT**

71. For the purpose of this proceeding, Respondent:
- a. admits the facts set forth in paragraph 3 and 4 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.
72. Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6) establishes the civil administrative penalty amounts the EPA may assess in this type of proceeding. The maximum amounts have been adjusted for inflation under 40 C.F.R. part 19.
73. 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 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.
74. Respondent agrees to:
- a. pay a civil penalty in the amount of **\$50,000**, in twelve monthly installments, as follows:
    - i. The first payment is due on the first day of the month following the month in which the final order approving this Agreement is filed with the Regional Hearing Clerk (unless the final order is filed during the last week of the month, in which case the first payment is due by the fifth day of the following month).
    - ii. Thereafter, each monthly payment is due on the first day of the month.
    - iii. The first eleven payments shall be in the amount of \$4,200 each. The twelfth payment shall be in the amount of \$3,800.
  - b. make each payment 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 each payment, email proof of payment to Donna 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 [haniewicz.melissa@epa.gov](mailto:haniewicz.melissa@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.

75. If Respondent fails to timely pay any portion of the penalty assessed under the final order approving this Agreement, the 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 the EPA or engaging in programs the EPA sponsors or funds under 40 C.F.R. § 13.17.
76. 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.
77. 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 Facility 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.
78. The undersigned representative of Respondent certifies he or she has authority to bind Respondent to this Agreement.
79. Except as qualified by paragraph 75, above, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

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

80. 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.
81. The terms of this Agreement may not be modified or amended except upon the written agreement of all parties, and approval of the Regional Judicial Officer or Regional Administrator.
82. 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 the 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.
83. Nothing herein shall be construed to limit the power of the 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.
84. If and to the extent the 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 the EPA, the EPA reserves any and all of its legal and equitable rights.

## **VIII. PUBLIC NOTICE**

85. As required by section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C), and 40 C.F.R. § 22.45, prior to submitting this Agreement to the Regional Judicial Officer for approval, the EPA will provide public notice of this Agreement and a reasonable opportunity to comment on the matter. The EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations indicating this Agreement is inappropriate, improper, or inadequate.

## **IX. SERVICE OF FINAL ORDER**

86. The parties consent to service of the final order approving this Agreement at the following valid email addresses: [livingston.peggy@epa.gov](mailto:livingston.peggy@epa.gov) (for Complainant) and [kimmell01@aol.com](mailto:kimmell01@aol.com) (for Respondent).




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

Date: May 24, 2021

By: JANICE PEARSON Digitally signed by JANICE  
PEARSON  
Date: 2021.05.24 10:34:06 -06'00'  
Janice Pearson, Chief  
RCRA and OPA Enforcement Branch  
**Complainant**

Date: May 20, 2021

**PHOENIX PETROLEUM, LLC**  
**Respondent**

By:   
Ronald C. Koehler, President

## CERTIFICATE OF SERVICE

The undersigned certifies that the attached **CONSENT AGREEMENT** and the **FINAL ORDER** in the matter of **PHOENIX PETROLEUM, LLC (formerly Condor Petroleum Company, LLC)**; **DOCKET NO.: CWA-08-2021-0016** was filed with the Regional Hearing Clerk on August 2, 2021.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Peggy Livingston, Enforcement Attorney, and sent via certified receipt email on August 2, 2021, to:

Respondent

Tom Kimmell, Attorney  
Kimmell01@aol.com

EPA Financial Center

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

August 2, 2021

Haniewicz,  
Melissa

Digitally signed by  
Haniewicz, Melissa  
Date: 2021.08.02  
10:39:25 -06'00'

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Melissa Haniewicz  
Regional Hearing Clerk