



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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DOCKET NO.: CWA-08-2021-0009

IN THE MATTER OF:	)	
	)	
HESS CORPORATION,	)	FINAL ORDER
HESS MIDSTREAM OPERATIONS LP, AND	)	
HESS TIOGA GAS PLANT 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, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 11th DAY OF March, 2021.

KATHERIN  
HALL

Digitally signed by  
KATHERIN HALL  
Date: 2021.03.11 11:46:46  
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Katherin E. Hall  
Regional Judicial Officer

January 25, 2021  
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Received by  
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Hearing Clerk

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

IN THE MATTER OF: )

Hess Corporation, )  
Hess Midstream Operations LP, and )  
Hess Tioga Gas Plant LLC, )

Respondents )

) **CONSENT AGREEMENT**

) Docket No CWA-08-2021-0009

**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 Hess Corporation, Hess Midstream Operations LP, and Hess Tioga Gas Plant LLC (collectively, Respondents) and the undersigned U.S. Environmental Protection Agency official (Complainant). Any combination of one or more of the three Respondents will sometimes be referenced below as Hess.
3. Hess Midstream Operations LP and Hess Tioga Gas Plant LLC own and/or operate a facility known as the Tioga Gas Plant, located at 10834 68<sup>th</sup> Street, Tioga, North Dakota (the Facility). Hess Corporation previously owned and/or operated the Facility.
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 Respondents agree 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). 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).
6. 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**

7. 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).

#### **A. Spill Prevention Control and Countermeasure Regulations**

8. 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.
9. 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."
10. 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.
11. 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.
12. 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.

#### **B. Facility Response Regulations**

13. In 1990, Congress amended the Act, directing the President to issue new regulations to mitigate potential harm caused by facilities that because of their location "could reasonably be expected to cause substantial harm to the environment" by discharging oil into or on the navigable waters of the United States or adjoining shorelines. 33 U.S.C. § 1321(j)(5)(A) and (B). These facilities are sometimes referenced as "substantial harm facilities."
14. As part of the 1990 amendments to the Act, Congress mandated that the President issue regulations requiring the owners or operators of substantial harm facilities to submit "a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance." 33 U.S.C.

§ 1321(j)(5)(A). The President subsequently delegated the authority to issue these regulations to the EPA.

15. In 1994, the EPA amended 40 C.F.R. part 112 by promulgating regulations codified at 40 C.F.R. §§ 112.20 and 112.21. These are known as the Facility Response Regulations.
16. The Facility Response Regulations require owners and operators of non-transportation-related onshore oil storage and distribution facilities to determine, under the criteria established by the EPA in 40 C.F.R. § 112.20(f)(1), whether their facilities could reasonably be expected to cause substantial harm to the environment by discharging oil into or on navigable waters or adjoining shorelines.
17. If a facility is determined to be a substantial harm facility under the criteria referenced above, the Facility Response Regulations require the owner or operator of the facility to prepare and submit to the EPA a Facility Response Plan (FRP), which details the facility's emergency plans for a worst case oil spill. 40 C.F.R. § 112.20(a).
18. An FRP must be consistent with the National Oil and Hazardous Substance Contingency Plan, 40 C.F.R. part 300, and any applicable area contingency plans. 40 C.F.R. § 112.20(g). In addition, the FRP must either follow the format contained in 40 C.F.R. part 112, appendix F, or contain the elements described in 40 C.F.R. § 112.20(h)(1)-(11).
19. A facility subject to the Facility Response Regulations must also conduct response training and drill and exercise programs that either follow the National Preparedness for Response Exercise Program (PREP) Guidelines or are approved by the EPA. 40 C.F.R. § 112.21.

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

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

20. Respondent Hess Corporation is a Delaware corporation.
21. Respondent Hess Midstream Operations LP, formerly known as Hess Midstream Partners LP, is a Delaware limited partnership.
22. Respondent Hess Tioga Gas Plant LLC is a Delaware limited liability company.
23. Each 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.
24. Each Respondent is engaged in the business of oil and gas midstream processing.
25. At the Facility (see paragraph 3, above), Respondents store oil.
26. The Facility has an aboveground oil storage capacity of more than 1,620,000 gallons, including but not limited to tanks storing gasoline, diesel fuel, crude oil, lube oil, and produced water. Its largest tank has a storage capacity of 540,000 gallons.

27. The Facility began operations in 1955.
28. The Facility is in the Lake Sakakawea watershed.
29. In the event of an uncontained spill from the Facility, oil from the largest tank referenced in paragraph 26, above, would flow a tenth of a mile into an unnamed tributary of Paulsen Creek.
30. After entering the unnamed tributary of Paulsen Creek, the oil would flow for 6.86 miles to Paulsen Creek, and then for 2.52 miles before entering the White Earth River.
31. The unnamed tributary of Paulsen Creek is a perennial or relatively permanent tributary of Paulsen Creek.
32. Paulsen Creek is a perennial or relatively permanent tributary of the White Earth River.
33. The White Earth River is a perennial or relatively permanent tributary of Lake Sakakawea.
34. Lake Sakakawea is an impoundment of the Missouri River.
35. The Missouri River is an interstate, traditionally navigable water.
36. The unnamed tributary of Paulsen 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).
37. Paulsen 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).
38. 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).
39. 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).
40. 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).
41. Due to its location, the Facility could reasonably be expected to discharge oil and/or other pollutants to the unnamed tributary of Paulsen Creek referenced in paragraph 29, above, 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.
42. Due to its location, the Facility could reasonably be expected to discharge oil and/or other pollutants to Paulsen 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.

43. Due to its location, the 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.
44. Due to its location, the Facility could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines.
45. The 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).
46. The Facility is a “non-transportation related” facility” as that term is defined in 40 C.F.R. § 112.2.
47. Respondent Hess Corporation was previously an “owner or operator” of the Facility as that term is defined in section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6).
48. Respondent Hess Midstream Operations LP is an “owner or operator” of the Facility as that term is defined in section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6).
49. Respondent Hess Tioga Gas Plant LLC is an “owner or operator” of the Facility as that term is defined in section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6).
50. The Facility is subject to the SPCC Regulations.
51. The Facility is subject to the FRP Regulations.
52. On October 7, 2015, EPA representatives conducted an inspection of the Facility to investigate compliance with the SPCC Regulations.

#### **SPCC Findings**

53. During the EPA’s Facility inspection referenced above, Hess provided the EPA with an SPCC plan for the Facility dated November 21, 2014.
54. During the EPA’s Facility inspection, the EPA provided Respondents with a preliminary summary of deficiencies in the November 21, 2014 SPCC plan and in Hess’s implementation of the SPCC Regulations.
55. In the closing conference for the EPA’s Facility inspection, the EPA inspectors asked Hess:

- (a) to report back to the EPA on Hess's progress in addressing the deficiencies the EPA had identified; and
- (b) whether two produced water tanks at the Facility with storage capacities of more than 200,000 gallons each, neither of which had been mentioned in the SPCC plan, contained oil.

56. The SPCC plan deficiencies the EPA noted during its Facility inspection included the following (with relevant regulatory requirements cited in parentheses):

- (a) Facility Description and Diagrams. The plan's diagram of the Facility did not show either the day tanks Hess had added to the Facility during a 2014 expansion or its used oil tank. The drum and tote storage were not represented in the correct location, and transfer areas were not clearly labeled. (40 C.F.R. § 112.7(a)(3).)
- (b) Discharge Prevention Measures. The plan did not include an adequate description of discharge prevention measures. (40 C.F.R. § 112.7(a)(3)(ii).)
- (c) Drainage Controls. The plan did not include an adequate description of drainage controls. (40 C.F.R. § 112.7(a)(3)(iii).)
- (d) Countermeasures. The plan did not include an adequate description of countermeasures for discharge recovery, response, and cleanup. (40 C.F.R. § 112.7(a)(3)(iv).)
- (e) Truck Loading Area / Secondary Containment. The plan did not include an adequate description of secondary containment in place for the truck loading area. (40 C.F.R. § 112.7(c).)
- (f) Inspection Records. Inspection records for three years were not maintained with the plan. (40 C.F.R. § 112.7(e).)
- (g) Inspection and Test Procedures. The plan included an inspection form that did not identify the areas to be inspected. The plan referenced the Facility's FRP for copies of the forms to be used, but these forms were not in use. (40 C.F.R. § 112.7(e).) In addition, the plan did not adequately describe how valves, piping, and appurtenances were to be inspected, instead referring to the FRP for a copy of the inspection form to use. (40 C.F.R. §§ 112.7(e) and 112.8(d)(4).)
- (h) Personnel Designation. The plan did not designate a person accountable for discharge prevention and reporting to facility management. (40 C.F.R. § 112.7(f)(2).)
- (i) Conformance with State Requirements. The plan did not address conformance with applicable state rules, regulations, and guidelines. (40 C.F.R. § 112.7(j).)

- (j) Secondary Containment. The plan did not address adequately sized secondary containment for the largest single container with freeboard for precipitation or describe sufficiently impervious materials or construction for secondary containment. (40 C.F.R. §§ 112.8(c)(2).)
- (k) Inspections for Retained Rainwater. The plan did not address inspections for ensuring retained rainwater would not cause a discharge. (40 C.F.R. § 112.8(c)(3)(ii).)
- (l) Bypass Valves. The plan did not address opening and resealing bypass valves under supervision. (40 C.F.R. § 112.8(c)(3)(iii).)
- (m) Records of Drainage Events. The plan did not address procedures for maintaining adequate records of drainage events. (40 C.F.R. § 112.8(c)(3)(iv).)
- (n) Personnel Qualifications. The plan did not address qualifications for personnel performing tests and inspections. (40 C.F.R. § 112.8(c)(6).)
- (o) Devices to Prevent Overflow. The plan did not include an adequate description of devices on tanks to prevent overflow. (40 C.F.R. § 112.8(c)(8).)
- (p) Terminal Transfer Point. The plan did not address marking the terminal connection at its transfer point to indicate its origin when piping was not in service or was in standby service for an extended time. (40 C.F.R. § 112.8(d)(2).)

57. The field implementation deficiencies the EPA noted in its Facility inspection included the following (with relevant regulatory requirements cited in parentheses):

- (a) Facility Layout. The Facility included tanks not shown in the SPCC plan's diagram, and the drum and tote storage at the Facility were not in the places indicated in the SPCC plan's diagram. (40 C.F.R. § 112.7(a)(3).)
- (b) Inspection Procedures. Inspections were not conducted in accordance with written procedures in the SPCC plan. As indicated above, the plan referenced the Facility's FRP for copies of the forms to be used, but these forms were not in use. (40 C.F.R. § 112.7(e).) In addition, retained rainwater was not being inspected. (40 C.F.R. § 112.8(c)(3)(ii).)
- (c) Pre-Departure Inspections for Discharges. The Facility did not have signage reminding vehicle drivers to inspect for discharges before departing (40 C.F.R. § 112.7(h)(3).)
- (d) Secondary Containment. The Facility did not have secondary containment for two water tanks and had inadequate, insufficiently impervious secondary containment for Tank D-87. The Facility also had numerous areas with erosion, e.g., on the berm for



natural gasoline tanks and on the banks of both the east and west retention ponds. The erosion compromised the integrity and impervious nature of the containment. (40 C.F.R. § 112.8(c)(2).)

- (e) Records. Facility representatives were unaware of procedures or records being kept for pond and dike drainage. (40 C.F.R. § 112.8(c)(3)(iv).)
- (f) Containers and Container Support Inspections. The Facility's containers and container supports were not being inspected. (40 C.F.R. § 112.8(c)(6).)
- (g) Overflow Protection. Facility representatives were unsure of what, if any, method was in use to warn of potential tank overflows. (40 C.F.R. § 112.8(c)(8).)
- (h) Visible Discharge. Tank D64c had a leaky valve, there was a pool of crude oil near a valve on Tank D29, and there were numerous spills from drums and that high pressure amine building to which sorbent pads had been applied but had not been cleaned up. (40 C.F.R. § 112.8(c)(10).)
- (i) Portable Containers. A 300-gallon capacity used oil tote and new and used oil drums in the truck track area were neither positioned to prevent a discharge nor protected with containment. (40 C.F.R. § 112.8(c)(11).)

- 58. In a follow-up telephone conversation on October 28, 2015, the EPA advised Hess that the two produced water tanks referenced in paragraph 55, above, would be considered oil tanks needing secondary containment if they contained enough oil to create a sheen. Hess indicated it would provide the EPA results of sampling from the tanks.
- 59. On November 6, 2015, Hess transmitted an SPCC Inspection Report and Action Plan to Region 8, describing how it intended to address the deficiencies the EPA had identified.
- 60. On December 9 and 10, 2015, Hess emailed the EPA an update on corrections to the SPCC plan for the Facility, a revised plan dated December 7, 2015 (which was labelled as "Revision 2), and an updated facility diagram for the Facility.
- 61. On January 6 and 8, 2016, Hess emailed the EPA with sample results for the two produced water tanks referenced in paragraph 55, above. The results indicated the tanks included oil, benzene, toluene ethyl benzene, and total xylenes. The January 6 and 8 emails also included an update on progress in addressing the SPCC deficiencies.
- 62. On January 15, 2016, Hess transmitted a revised SPCC plan, dated January 12, 2016 and, as was the case with the prior version, labelled as "Revision 2."
- 63. In response to Hess's January 15, 2016 submittal, the EPA indicated that in the January 12, 2016 plan, some deficiencies had been resolved but identified others that had not.

64. On September 29, 2016, having heard nothing from Hess since the review of the January 2016 SPCC plan referenced in paragraph 63, above, the EPA requested an update from Hess.
65. On October 3, 2016, Hess emailed the EPA a revised plan (dated May 2016) and a summary of corrective actions Hess had undertaken since January of 2016.
66. On October 28, 2016, Hess transmitted an updated SPCC plan, dated October 14, 2016, to the EPA. The EPA found the plan generally acceptable and informally advised Hess to this effect.
67. On October 28, 2016, in addition to the updated SPCC plan referenced in paragraph 66, above, Hess indicated it would install containment in the spring of 2017 around the two produced water tanks referenced in paragraph 55, above.
68. On September 26, 2018, having heard nothing from Hess concerning the status of containment for the two produced water tanks referenced in paragraph 55, above, the EPA sent a letter to Hess requesting a meeting to address this and other SPCC and FRP issues.
69. On October 29, 2018, Hess notified the EPA that on October 28, 2018, it had finished building secondary containment around the two produced water tanks referenced in paragraph 55, above.

#### **FRP Findings**

70. The EPA's October 7, 2015 Facility inspection revealed that Hess had prepared an FRP for the Facility but had not submitted it to the EPA.
71. During the October 7, 2015 inspection, the EPA inspectors indicated to Hess that the FRP for the Facility was inadequate and that Hess would need to submit an adequate version to the EPA.
72. On October 28, 2015 and September 29, 2016, the EPA asked Hess to submit an FRP to the EPA.
73. On November 16, 2016, Hess submitted the FRP to the EPA.
74. On December 21, 2017, after reviewing the November 2016 FRP, the EPA provided Hess a written list of findings, noting, among other things, the following deficiencies (with the relevant regulatory cites in parentheses):
  - a. Failure to sign and date the substantial harm certification (40 C.F.R. part 112, appendix F, section 2.3 and attachment F-1).

- b. Failure to include an emergency response notification telephone list (40 C.F.R. part 112, Appendix F, section 1.3.1) and to identify private spill response personnel and equipment necessary to remove a worse case discharge (40 C.F.R. § 112.20(h)(3)(i)).
- c. Failure to address boom, sorbents, hand tools, and communications equipment in the facility response equipment list (40 C.F.R. part 112, appendix F, section 1.3.2).
- d. Inadequate description of response personnel (40 C.F.R. part 112, appendix F, section 1.3.4).
- e. Failure to address community evacuation plans (40 C.F.R. part 112, appendix F, section 1.3.5.3 and 40 C.F.R. § 112.20(h)(1)(vi)).
- f. Failure to address a vulnerability analysis, an analysis of the potential for an oil discharge and the oil spill history (40 C.F.R. part 112, appendix F, sections 1.4.2, 1.4.3, and 1.4.4).
- g. Failure to address discharge scenarios (40 C.F.R. part 112, appendix F, section 1.5).
- h. Inadequate discussion of plan implementation, including omission of procedures for disposal and a plan for containment and drainage (40 C.F.R. part 112, appendix F, section 1.7).
- i. Omission of response equipment inspection log (40 C.F.R. part 112, appendix F, section 1.8.1.2).
- j. Inadequate description of facility exercises and drills and response training (40 C.F.R. part 112, appendix F, sections 1.8.2 and 1.8.3).
- k. Omission of diagrams (40 C.F.R. part 112, appendix F, section 1.9).

- 75. On January 19, 2018, Hess submitted a revised FRP to the EPA.
- 76. On January 29, 2018, the EPA approved the revised FRP.
- 77. On November 9, 2018, Hess submitted a revised FRP to reflect the secondary containment added on October 28, 2018.

## V. ALLEGED VIOLATIONS OF LAW

The alleged violations are set forth in the following counts:

### Count 1: Failure to Prepare an Adequate SPCC Plan

78. Respondents are required to prepare an SPCC plan for the Facility in accordance with the requirements of 40 C.F.R. part 112.
79. At the time of the EPA's inspection referenced in paragraph 52, above, Respondents' SPCC plan for the Facility was dated November 21, 2014.
80. As further described in paragraph 56, above, Respondents' November 21, 2014 SPCC plan for the Facility failed to comply with the following requirements:
  - (a) 40 C.F.R. § 112.7(a)(3), for describing and diagramming the Facility;
  - (b) 40 C.F.R. § 112.7(a)(3)(ii), for describing discharge prevention measures;
  - (c) 40 C.F.R. § 112.7(a)(3)(iii), for describing drainage controls;
  - (d) 40 C.F.R. § 112.7(a)(3)(iv), for describing countermeasures for discharge recovery, response, and cleanup;
  - (e) 40 C.F.R. § 112.7(c), for describing secondary containment in the truck loading area;
  - (f) 40 C.F.R. § 112.7(e), for describing inspection and test procedures and for maintaining inspection records;
  - (g) 40 C.F.R. § 112.7(f)(2), for designating personnel responsible for discharge prevention and reporting to facility management;
  - (h) 40 C.F.R. § 112.7(j), for addressing conformance with applicable state rules, regulations, and guidelines;
  - (i) 40 C.F.R. §§ 112.8(c)(2) and 112.6(a)(3)(ii), for addressing adequately sized secondary containment for the largest single container with freeboard for precipitation and describing sufficiently impervious materials or construction for secondary containment;
  - (j) 40 C.F.R. § 112.8(c)(3)(ii), for describing inspections to ensure retained rainwater would not cause a discharge;
  - (k) 40 C.F.R. § 112.8(c)(3)(iii), for addressing opening and resealing bypass valves under supervision;

- (l) 40 C.F.R. § 112.8(c)(3)(iv), for discussing adequate records of drainage events;
- (m) 40 C.F.R. § 112.8(c)(6), for describing qualifications for personnel performing tests and inspections;
- (n) 40 C.F.R. § 112.8(c)(8), for describing devices on tanks to prevent overflow;
- (o) 40 C.F.R. § 112.8(d)(2), for marking the terminal connection at the transfer point; and
- (p) 40 C.F.R. § 112.8(d)(4), for describing the manner of inspecting valves, piping, and appurtenances.

81. Respondents did not correct all the SPCC plan violations cited in paragraph 80, above, until October of 2016.

82. Respondents' failures to comply with the SPCC regulations, as detailed in paragraphs 56, 80, and 81, above, constitute violations of 40 C.F.R. §§ 112.7(a)(3), 112.7(a)(3)(ii), 112.7(a)(3)(iii), 112.7(a)(3)(iv), 112.7(c), 112.7(e), 112.7(f)(2), 112.7(j), 112.8(c)(2), 112.8(c)(3)(ii), 112.8(c)(3)(iii), 112.8(c)(3)(iv), 112.8(c)(6), 112.8(c)(8), 112.8(d)(2), and 112.8(d)(4).

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

83. Respondents are required to implement the SPCC requirements of 40 C.F.R. part 112 at the Facility.

84. As further described in paragraph 57, above, Respondents failed to comply with the following SPCC field implementation requirements at the Facility:

- (a) 40 C.F.R. § 112.7(a)(3), due to the Facility including tanks not shown in the SPCC plan's diagram, and the placement of the drum and tote storage at places other than indicated in the SPCC plan's diagram;
- (b) 40 C.F.R. § 112.7(e), due to not conducting inspections in accordance with written procedures in the SPCC plan, including failing to use forms referenced in the plan;
- (c) 40 C.F.R. § 112.7(h)(3), due to lack of signage reminding vehicle drivers to inspect for discharges before departing;
- (d) 40 C.F.R. § 112.8(c)(2), due to lack of secondary containment for the two produced water tanks referenced in paragraph 55, above, inadequate secondary containment for Tank D-87, and numerous areas of erosion, e.g., on the berm for natural gasoline tanks and on the banks of both the east and west retention ponds, which compromised the integrity and impervious nature of the containment;

- (e) 40 C.F.R. § 112.8(c)(3)(iv), due inadequate records of pond and dike drainage;
- (f) 40 C.F.R. § 112.8(c)(6), due to failures to inspect the Facility's containers and container supports;
- (g) 40 C.F.R. § 112.8(c)(8), due to lack of devices to warn of potential tank overflows;
- (h) 40 C.F.R. § 112.8(c)(3)(ii), due to lack of inspections of retained rainwater;
- (i) 40 C.F.R. § 112.8(c)(10), due to visible leaks and spills; and
- (j) 40 C.F.R. § 112.8(c)(11), due to failures to position a 300-gallon capacity used oil tote and new and used oil drums in the truck track area to prevent a discharge and failures to provide containment protection for them.

85. Although Respondents corrected some of the SPCC violations cited in paragraph 84, above, in 2015 and 2016, it did not provide secondary containment for the two produced water tanks referenced in paragraph 55, above, until October 28, 2018.

86. Respondents' failures to comply with the SPCC regulations, as detailed in paragraphs 57, 84, and 85, above, constitute violations of 40 C.F.R. §§ 112.7(a)(3), 112.7(e), 112.7(f)(2), 112.7(h)(3), 112.8(c)(2), 112.8(c)(3)(iv), 112.8(c)(6), 112.8(c)(8), 112.8(c)(10), and 112.8(c)(11).

### **Count 3: Failure to Submit Facility Response Plan**

87. Respondents are required to prepare and submit an FRP to the EPA for the Facility. 40 C.F.R. § 112.20(a).

88. Respondents failed to submit an FRP to the EPA until November 16, 2016.

89. Respondents' failure to submit an FRP to the EPA constitutes a violation of 40 C.F.R. § 112.20(a).

### **Count 4: Inadequate Facility Response Plan**

90. Respondents are required to include elements specified in 40 C.F.R. § 112.20 in the Facility's FRP

91. Respondents' FRP for the Facility, as submitted to the EPA on November 16, 2016, failed to meet the requirements of the following regulations:

- (a) 40 C.F.R. part 112, appendix F, section 2.3 and attachment F-1, because the substantial harm certification was neither signed nor dated;

- (b) 40 C.F.R. part 112, appendix F, section 1.3.1, due to its omission of an emergency response notification telephone list and its failure to identify private spill response personnel and equipment necessary to remove a worse case discharge;
  - (c) 40 C.F.R. part 112, appendix F, section 1.3.2, due to its failure to address boom, sorbents, hand tools, and communications equipment in the facility response equipment list;
  - (d) 40 C.F.R. part 112, appendix F, section 1.3.4, due to an inadequate description of response personnel;
  - (e) 40 C.F.R. part 112, appendix F, section 1.3.5.3 and 40 C.F.R. § 112.20(h)(1)(vi), due to its failure to address community evacuation plans;
  - (f) 40 C.F.R. part 112, appendix F, sections 1.4.2, 1.4.3, and 1.4.4, due to its failure to address a vulnerability analysis, an analysis of the potential for an oil discharge and the oil spill history;
  - (g) 40 C.F.R. part 112, appendix F, section 1.5, due to its failure to address discharge scenarios;
  - (h) 40 C.F.R. part 112, appendix F, section 1.7, due to an inadequate discussion of plan implementation, including omission of procedures for disposal and a plan for containment and drainage;
  - (i) 40 C.F.R. part 112, appendix F, section 1.8.1.2, due to its omission of response equipment inspection log;
  - (j) 40 C.F.R. part 112, appendix F, sections 1.8.2 and 1.8.3, due to an inadequate description of facility exercises and drills and response training; and
  - (k) 40 C.F.R. part 112, appendix F, section 1.9, due to its omission of diagrams.
92. Respondents' failures to include all required elements of an FRP, as detailed in paragraphs 74 and 91, above, constitute violations of 40 C.F.R. § 112.20(h)(1)(vi), 40 C.F.R. § 112, appendix F, sections 1.3.1, 1.3.2, 1.3.4, 1.3.5.3, 1.4.2, 1.4.3, 1.4.4, 1.5, 1.7, 1.8.1.2, 1.8.2, 1.8.3, 1.9, and 2.3, and 40 C.F.R. part 112, appendix F, attachment F-1.

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

93. For the purpose of this proceeding, Respondents:
- a. admit the facts set forth in paragraph 3 of this Agreement;
  - b. admit the jurisdictional allegations in section II of this Agreement;

- c. neither admit nor deny the factual allegations in sections IV and V of this Agreement;
  - d. consent to the assessment of a civil penalty as stated below;
  - e. acknowledge this Agreement constitutes an enforcement action for purposes of considering Respondents' compliance history in any subsequent enforcement action; and
  - f. waive any right to contest the allegations in this Agreement and to appeal any final order approving this Agreement.
94. 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.
95. Having considered the seriousness of the violations cited in the Alleged Violations of Law, above, the economic benefit to Respondents, 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 Respondents, 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.
96. Respondents agree to:
- a. pay a civil penalty in the amount of **\$195,000** 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 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.



97. If Respondents fail 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 Respondents' 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.
98. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondents will not deduct penalties paid under this Agreement for federal tax purposes.
99. This Agreement applies to Respondents and their officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Respondents 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 Respondents, including but not limited to any transfer of assets or real or personal property, shall not alter Respondents' responsibilities under this Agreement.
100. The undersigned representative of each Respondent certifies he or she has authority to bind the relevant Respondent to this Agreement.
101. Except as qualified by paragraph 97, above, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

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

102. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondents' liability for federal civil penalties for the violations specifically alleged above.

- 103. 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.
- 104. Nothing in this Agreement shall relieve Respondents 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.
- 105. 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 Respondents or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
- 106. If and to the extent EPA finds, after signing this Agreement, that any information provided by Respondents 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.

**VIII. PUBLIC NOTICE**

- 107. 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, EPA will provide public notice of this Agreement and a reasonable opportunity to comment on the matter. 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.


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

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

By: **JANICE PEARSON** Digitally signed by JANICE PEARSON  
Date: 2021.01.25 10:17:12 -07'00'  
 Janice Pearson, Chief  
 RCRA and OPA Enforcement Branch  
**Complainant**

**HESS CORPORATION  
Respondent**

Date: 1/4/2021

By:   
 Brent Lohnes  
 General Manager – North Dakota


**HESS MIDSTREAM OPERATIONS LP  
Respondent**

By: Hess Midstream LP, as delegatee of authority  
from Hess Midstream Partners GP LP, the general  
partner of Hess Midstream Operations LP

By: Hess Midstream GP LP, as general partner of  
Hess Midstream LP

By: Hess Midstream GP LLC, as general partner of  
Hess Midstream GP LP

Date: 01/11/2021

By:   
\_\_\_\_\_  
John A. Gatling  
President and Chief Operating Officer

**HESS TIOGA GAS PLANT LLC  
Respondent**

Date: 01/11/2021

By:   
\_\_\_\_\_  
John A. Gatling  
Vice President

## CERTIFICATE OF SERVICE

The undersigned certifies that the attached **CONSENT AGREEMENT** and the **FINAL ORDER** in the matter of **HESS CORPORATION, HESS MIDSTREAM OPERATIONS, LP, AND HESS TIOGA GAS PLANT LLC; DOCKET NO.: CWA-08-2021-0009** was filed with the Regional Hearing Clerk on March 11, 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 March 11, 2021, to:

### Respondent

Alan Lindsey, Senior Legal Counsel  
Hess Corporation  
alindsey@hess.com

### Legal Representation

Harrison Reback, Attorney  
Baker Botts  
Harrison.reback@bakerbotts.com

### EPA Financial Center

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

March 11, 2021

MELISSA  
HANIEWICZ

Digitally signed by  
MELISSA HANIEWICZ  
Date: 2021.03.11  
12:17:45 -07'00'

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Melissa Haniewicz  
Regional Hearing Clerk