**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
**REGION 5**

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| **In The Matter Of:** | ) | **Docket No. CWA-05-2024-0007** |
| | ) | |
| **Hartford Wood River Terminal, LLC** | ) | **Proceeding to Assess a Class II Civil Penalty** |
| **Hartford, Illinois** | ) | **Under Section 311(b)(6) of the Clean Water** |
| | ) | **Act, 33 U.S.C. § 1321(b)(6)** |
| **Respondent**. | ) | |

**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 311(b)(6)(A)(ii) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6)(A)(ii), and Sections 22.1(a)(6), 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/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Superfund Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Hartford Wood River Terminal, LLC, a limited liability company doing business in Illinois.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

**Jurisdiction and Waiver of Right to Judicial Review and Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and alleged violations in this CAFO.

8. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including its right to request a hearing under 40 C.F.R. § 22.15(c) and Section 311(b)(6)(B)(ii), 33 U.S.C. § 1321(b)(6)(B)(ii); its right to seek federal judicial review under Section 311(b)(6)(G) of the CWA, 33 U.S.C. § 1321(b)(6)(G), and Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; any right to contest the allegations in this CAFO; and its right to appeal this CAFO.

**Statutory and Regulatory Background**

**Spill prevention, control and countermeasure plan requirements**

9. Section 311(j)(1)(C) of the CWA, 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 and hazardous substances from vessels and from onshore and offshore facilities, and to contain such discharges. The authority to promulgate these regulations for non-transportation-related onshore facilities has been delegated to EPA by Executive Order 12777 (Oct. 18, 1991).

10. The oil pollution prevention regulations at 40 C.F.R. Part 112 implement the requirements of Section 311(j)(1)(C) of the CWA, and set forth procedures, methods,

equipment, and other requirements to prevent the discharge of oil and hazardous substances from non-transportation-related onshore facilities into or upon, among other things, the navigable waters of the United States and adjoining shorelines. *See* 40 C.F.R § 112.1(a)(1).

11. The oil pollution prevention regulations at 40 C.F.R. Part 112 apply to, among other things, owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, 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, and have an aboveground oil storage capacity of more than 1,320 U.S. gallons or a completely buried oil storage capacity greater than 42,000 U.S. gallons. *See* 40 C.F.R. §§ 112.1(b) and (d)(2).

12. 40 C.F.R. § 112.3 requires the owner or operator of a subject facility to prepare in writing and implement a Spill Prevention Control and Countermeasure Plan ("SPCC Plan") in accordance with the requirements of 40 C.F.R. Part 112.

13. 40 C.F.R. § 112.7(a)(3) requires the owner or operator of a subject facility to describe in the SPCC Plan the physical layout of the facility and include a facility diagram, which must include all transfer stations and connecting pipes.

14. 40 C.F.R. § 112.7(c) requires the owner or operator of a subject facility to provide appropriate containment and/or diversionary structures or equipment as set forth therein.

15. 40 C.F.R. § 112.7(h)(1) requires the owner or operator of a subject facility with a loading/unloading rack to design a containment system to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the facility.

16. 40 C.F.R. § 112. 112.8(c)(2) requires the owner or operator of a subject facility to construct all bulk storage tank installations to provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation, and to ensure that diked areas are sufficiently impervious to contain discharged oil.

17. 40 CFR §112.8(c)(5) requires the owner or operator of a subject facility not to use partially buried or bunkered metallic tanks for the storage of oil, unless the owner or operator protects the buried section of the tank for corrosion.

18. 40 C.F.R. § 112.8(c)(6) requires the owner or operator of a subject facility to test or inspect each aboveground container for integrity on a regular schedule and whenever it makes material repairs; 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; keep comparison records; inspect the container's supports and foundations; and frequently inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas.

**Facility response plan requirements**

19. Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), provides that the President shall issue regulations requiring the owner or operator of an onshore facility that, because of its location could reasonably be expected to cause substantial harm to the environment by discharging into or upon the navigable waters or adjoining shorelines, 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. The authority to promulgate these regulations for non-transportation-related onshore facilities has been delegated to EPA by Executive Order 12777 (Oct. 18, 1991).

20. The oil pollution prevention regulations at 40 C.F.R. Part 112, Subparts A and D, implement the requirements of Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), and require owners and operators of subject facilities to prepare and submit a facility response plan ("FRP") to EPA in accordance with the requirements of 40 C.F.R. §§ 112.20 and 112.21.

21. The regulations at 40 C.F.R. § 112.20(a) and (f) provide that an owner or operator of a subject facility must determine whether, because of its storage capacity and location, the facility could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines pursuant to criteria established by EPA in Appendix C to 40 C.F.R. Part 112, Substantial Harm Criteria.

22. A facility is a substantial harm facility if: (1) the facility transfers oil over water to or from vessels and has a total oil storage capacity greater than or equal to 42,000 gallons; or (2) the facility's total oil storage capacity is greater than or equal to 1,000,000 gallons and one of the following is true: (a) the facility does not have sufficient secondary containment to contain the capacity of the largest above-ground oil storage tank plus freeboard for precipitation with each storage area; (b) the facility is located at a distance (as calculated from the appropriate formula in 40 C.F.R. Part 112, Appendix C) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments; (c) the facility is located at a distance (as calculated from the appropriate formula in 40 C.F.R. Part 112, Appendix C) such that a discharge from the facility would shut down a public drinking water

intake; or (d) the facility has had a reportable oil spill of at least 10,000 gallons within the last five years. *See* 40 C.F.R. § 112.20(f)(1); Substantial harm criteria in Attachment C-I of Appendix C to 40 C.F.R. Part 112.

23. If a facility is a substantial harm facility under the criteria described in 40 C.F.R. § 112.20(f)(1) and Appendix C to 40 C.F.R. Part 112, the owner or operator of the facility is required to prepare and submit to EPA an FRP that details the facility's emergency plans for responding to an oil spill. *See* 40 C.F.R. § 112.20(a).

24. Each owner or operator of a substantial harm facility in operation on or before February 18, 1993 was required to submit an FRP in accordance with the requirements of 40 C.F.R. § 112.20 by August 30, 1994. *See* 40 C.F.R. § 112.20(a)(1).

25. The regulation at 40 C.F.R. § 112.2 defines "fish and wildlife and sensitive environments" as areas that may be identified by their legal designation or by evaluations of Area Committees (for planning) or members of the Federal On-Scene Coordinator's spill response structure (during responses). These areas may include wetlands, critical habitats for endangered or threatened species, wilderness and natural resource areas, wild and scenic rivers, and recreational areas.

26. The regulation at 40 C.F.R. § 112.2 defines "injury" as a measurable adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource resulting either directly or indirectly from exposure to a discharge, or exposure to a product of reactions resulting from a discharge.

**General provisions and enforcement of the CWA**

27. Pursuant to Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), and Executive Order 11735 (Aug. 3, 1973), EPA determined by regulation the quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare or environment of the United States, which are codified at 40 C.F.R. Part 110. Under 40 C.F.R. § 110.3, discharges of oil which may be harmful include discharges of oil that: (a) violate applicable water quality standards; or (b) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

28. Appendix A to 40 C.F.R. Part 112, Memorandum of Understanding between the Secretary of Transportation and EPA, defines "non-transportation-related" facility to include: oil production facilities including all equipment and appurtenances related thereto; oil refining facilities including all equipment and appurtenances related thereto; oil storage facilities including all equipment and appurtenances related thereto, as well as fixed bulk plant storage and terminal oil storage facilities; industrial, commercial, agricultural or public facilities which use and store oil; and waste treatment facilities, including in-plant pipelines, effluent discharge lines, and storage tanks.

29. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as waters of the United States, including the territorial seas.

30. Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2, define "onshore facility" as any facility of any kind located in, on, or under any land within the United States, other than submerged land.

31. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2, define "oil" as oil of any kind and in any form, including but not limited to: petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

32. Section 311(a)(6)(B) of the CWA, 33 U.S.C. § 1321(a)(6)(B), and 40 C.F.R. § 112.2, define "owner or operator" in the case of an onshore facility as any person owning or operating such onshore facility.

33. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2, define "person" as including an individual, firm, corporation, association, and a partnership.

34. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), and 40 C.F.R. § 112.2 define "discharge" to include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

35. EPA may assess a class II civil penalty against any owner, operator, or person in charge of any onshore facility who fails or refuses to comply with any regulations issued under Section 311(j) of the CWA, 33 U.S.C. 1321(j), pursuant to Section 311(b)(6)(A)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(A)(ii).

36. For violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j) EPA has authority, under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), as amended by the Debt Collection Improvement Act and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, and implemented by 40 C.F.R. Part 19, Adjustment of Civil Monetary Penalties for Inflation, to file an Administrative Complaint seeking a civil penalty of $20,719 per violation, or seeking $20,719 per day for each day during which a violation continues, up to a maximum of

$258,978 for violations occurring after November 2, 2015 and penalties assessed after January 1, 2022.

**Factual Allegations and Alleged Violations**

37. Respondent owns and operates a petroleum storage and distribution terminal located at located at 900 North Delmar Avenue, Hartford, Illinois ("Facility").

38. Respondent is a limited liability company, and is therefore a "person" as defined in Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7) and 40 C.F.R. § 112.2.

39. Respondent is an "owner" and "operator" of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.

40. The Facility is located on land within the United States and is therefore an "onshore facility" as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

41. Keller/Piasa Joint Venture began operating the Facility in 1976. Respondent purchased the Facility in 2001.

42. Respondent engages in storing, transferring, using, distributing or consuming oil or oil products at the Facility.

43. The Facility is an oil storage facility and is therefore an onshore "non-transportation-related" facility within the meaning of 40 C.F.R. Part 112, Appendix A.

44. The Facility has an aggregate above-ground storage capacity of greater than 24 million gallons of oil in tanks and containers.

45. The oil that Respondent stores, handles, distributes and/or consumes at the Facility could reasonably be expected to discharge to the Mississippi River.

46. Respondent is an owner and/or operator of a non-transportation-related onshore facility engaged in storing, processing, transferring, using or distributing oil and oil products, which, due to its location, could reasonably be expected to discharge oil in quantities that may be harmful as described in 40 C.F.R. Part 110 into or on the navigable waters or adjoining shorelines within the meaning of Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), and 40 C.F.R. § 112.1, and is therefore subject to the oil pollution prevention regulations at 40 C.F.R. Part 112.

47. Respondent is subject to the spill prevention, control and countermeasure plan regulations and is therefore required to prepare and implement a SPCC Plan in accordance with the requirements of 40 C.F.R. Part 112.

48. Respondent is an owner and/or operator of non-transportation-related onshore facility engaged in storing, transferring, using or distributing oil and oil products, which due to its location, could reasonably be expected to discharge oil in quantities that may cause substantial harm to the environment by discharging oil into or on navigable waters or adjoining shorelines within the meaning of Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), and 40 C.F.R. § 112.20(f)(1), and is therefore subject to the facility response plan regulations and must prepare, submit and maintain an FRP in accordance with the requirements of 40 C.F.R. Part 112, Subparts A and D.

49. On June 6, 2017, EPA conducted an inspection at the Facility ("the facility inspection".) The Respondent provided the inspectors with a copy of a SPCC Plan with a cover date of September 2014.

50. On October 2, 2019, Respondent submitted follow-up information to EPA's inspection. Respondent included a copy of an updated 2014 SPCC Plan that has been updated per the 5-year update.

51. During the 2017 inspection, inspectors, among other things, noted that connecting piping was not included on the facility diagram as required by 40 C.F.R. § 112.7(a)(3).

52. Respondent's 2014 SPCC Plan failed to adequately and accurately discuss provisions for appropriate containment and/or diversionary structures or equipment to prevent a discharge from the Facility as described in §112.1(b). Specifically, the Plan did not address the containment for the bulk storage tanks; portable containers; loading/unloading racks; transfer areas; and piping and related appurtenances, as required by 40 C.F.R. § 112.7(c).

53. Respondent's 2014 SPCC Plan failed to indicate that the loading/unloading rack containment system for two racks hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the facility, as required by 40 CFR §112.7(h)(1).

54. During the 2017 inspection, the inspectors noted that the Facility was undergoing extensive modifications of the secondary containment systems and piping. The containment system, which is a series of berms, is viewed as a total containment solution with four sections: northern section; small tank section east and west; middle section; and southern section. The Facility informed the inspectors that the east berm and west berm were modified and as a result, the containment volume available for the bulk storage tanks was reduced.

55. During the 2017 inspection, EPA requested, but the Facility was unable to provide, certified containment calculations for all the berms to demonstrate that the berms have enough containment capacity for the largest single bulk storage tank and sufficient freeboard to contain precipitation, as required under 40 C.F.R. § 112.8(c)(2).

56. During the 2017 inspection, the inspectors noted that the Facility was using a partially buried metallic tank for the use of sampling oil from the pipeline. The tank was not protected from corrosion as required under 40 C.F.R. § 112.8(c)(5).

57. Respondent's 2014 Plan failed to provide details on the integrity test and inspections performed on the bulk storage tanks. Specifically, the Plan did not provide details of the industry standards used to test or inspect the storage tanks; the qualifications for personnel performing test or inspections, and the frequency and type of testing and inspections, as required under 40 C.F.R. § 112.8(c)(6).

58. On December 20, 2020, EPA requested from the Respondent information on the integrity tests conducted on all the storage tanks listed in the revised 2014 SPCC Plan.

59. On January 18, 2021, Respondent submitted to EPA information on the integrity tests conducted on all the storage tanks at the Facility. Based on the information, the Respondent failed to conduct formal external inspections on the following tanks: Tank ID A8-2; Tank ID 80-10; Tank ID 80-9; Tank ID 80-8; Tank ID 80-6; Tank ID 80-5; Tank ID 20-7; Tank ID 20-6; Tank ID 20-5; Tank ID 20-4; and Tank ID 10-15, as required under 40 CFR §112.8(c)(6).

60. From June 6, 2017 to January 5, 2022, Respondent failed to include in the Facility's SPCC Plan a diagram of the connecting piping in violation of 40 C.F.R. §112.7(a)(3).

61. From June 6, 2017 to January 5, 2022, Respondent failed to discuss in the Facility's SPCC Plan the provisions for appropriate containment and/or diversionary structures or equipment to prevent a discharge from the bulk storage tanks; portable containers; loading/unloading racks; transfer areas; and piping and related appurtenances, in violation of 40 C.F.R. § 112.7(c).

62. From June 6, 2017 to January 5, 2022, Respondent failed to discuss in the Facility's SPCC Plan the loading/unloading rack containment system for two racks designed to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the facility, in violation of 40 CFR §112.7(h)(1).

63. From June 6, 2017 to January 5, 2022, Respondent failed to discuss in the Facility's SPCC Plan that the secondary containment structures (berms) have enough containment capacity for the largest single bulk storage tank and sufficient freeboard to contain precipitation, in violation of 40 C.F.R. § 112.8(c)(2).

64. From June 6, 2017 to January 5, 2022, Respondent failed to discuss in the Facility's SPCC Plan that the Facility was using a partially buried metallic tank for the use of sampling oil from the pipeline. The tank was not protected from corrosion in accordance with 40 C.F.R. § 112.8(c)(5), in violation of 40 C.F.R. § 112.8(c)(5).

65. From June 6, 2017 to March 31, 2023, Respondent used a partially buried metallic tank without corrosion protection in accordance with 40 C.F.R. § 112.8(c)(5), in violation of 40 C.F.R. § 112.8(c)(5).

66. From June 6, 2017 to January 5, 2022, Respondent failed to provide in the Facility's SPCC Plan details on the integrity test and inspections performed on the bulk storage

tanks. Specifically, the Plan did not provide details of the industry standards used to test or inspect the storage tanks; the qualifications for personnel performing test or inspections, and the frequency and type of testing and inspections, in violation of 40 C.F.R. § 112.8(c)(6).

67. From June 6, 2017 to September 16, 2022, Respondent failed to perform integrity testing on Tank ID A8-2; Tank ID 80-10; Tank ID 80-9; Tank ID 80-8; Tank ID 80-6; Tank ID 80-5; Tank ID 20-7; Tank ID 20-6; Tank ID 20-5; Tank ID 20-4; and Tank ID 10-15, in violation of 40 CFR §112.8(c)(6).

68. Based on analysis of the factors specified in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), the facts of this case, and the *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act*, dated August 1998, Complainant has determined that an appropriate civil penalty to settle this action is $23,000.

69. Respondent agrees to pay a civil penalty in the amount of $23,000 ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this consent agreement becomes final. The Final Order shall become final thirty (30) days after the date the Final Order ratifying this agreement is filed with the Regional Hearing Clerk ("Filing Date").

70. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: https://www.epa.gov/financial/makepayment. Additional instructions for making payments are available at: https://www.epa.gov/financial/additional-instructions-making-payments-epa.

71. When making a payment, Respondent shall:

a. Identify every payment with Respondent's name, "OSLTF-311", and the docket number of this Agreement, CWA-05-2024-0007.

b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following persons:

Juliane Grange
Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
via electronic mail to:
R5HearingClerk@epa.gov

Silvia Palomo
Superfund and Emergency Management Division
U.S. Environmental Protection Agency, Region 5
via electronic mail to:
palomo.silvia@epa.gov

Nicole Wood
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
via electronic mail to:
wood.nicole@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
via electronic mail to:
CINWD_AcctsReceivable@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number of Respondent's name.

72. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C. § 321(b)(6)(H), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance

of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1321(b)(6)(H). The rate of interest is the IRS standard underpayment rate.

b. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of collection proceedings.

c. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.

73. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following:

a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 131.13 and 13.14.

b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.

d. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, per

33 U.S.C. § 1321(b)(6)(H). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

74. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

75. This civil penalty is not deductible for federal tax purposes.

76. If Respondent does not pay timely the civil penalty, Complainant may request the United States Department of Justice to bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expenses for the collection action under Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

77. Respondent must pay the following on any amount overdue under this CAFO: the interest accrued on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings; a nonpayment penalty each quarter during which the assessed penalty is overdue, which shall be 20 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. *See* 33 U.S.C. § 1321(b)(6)(H).

**General Provisions**

78. The parties consent to service of this CAFO by email at the following email addresses: **wood.nicole@epa.gov** (for Complainant) and **Alec.Messina@heplerbroom.com** (for Respondent). Respondent understands that the CAFO will become publicly available upon proposal for public comment and upon filing.

79. Full payment of the penalty as described in paragraph 69, above, and full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

80. Full payment of a penalty described in paragraph 69, above, and full compliance with this CAFO shall not in any case affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

81. This CAFO does not affect Respondent's responsibility to comply with the CWA and other applicable federal, state, or local laws and permits.

82. Respondent certifies that it is complying with Section 311 of the CWA, 33 U.S.C. § 1321, the implementing oil pollution prevention regulations at Part 112.

83. This CAFO constitutes a "prior violation" as that term is used in EPA's *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* to determine Respondent's "history of prior violations" under Section 311(b)(8) of the CWA 33 U.S.C. § 1321(b)(8).

84. The terms of this CAFO bind Respondent and its successors and assigns.

85. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CAFO.

86. Each party agrees to bear its own costs and attorney fees in this action.

87. This CAFO constitutes the entire agreement between the parties.

88. The parties acknowledge and agree that final approval by EPA of this CAFO is subject to Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i) which provides, among other procedural requirements, public notice and a reasonable opportunity to comment on any proposed penalty order.

89. The parties acknowledge and agree that final approval by EPA of this CAFO is subject to 40 C.F.R. § 22.45(c)(4) which sets forth requirements under which a person not a party to this proceeding may petition to set aside a consent agreement and final order on the basis that material evidence was not considered.

90. Unless an appeal for judicial review is filed in accordance with Section 311(b)(6)(G) of the CWA, 33 U.S.C. § 1321(b)(6)(G) or 40 C.F.R. § 22.45, this CAFO shall become effective 30 days after the date of issuance, which is the date that the Final Order contained in this CAFO is signed by the Regional Judicial Officer or Regional Administrator. The effective date for this CAFO is thirty days after it is filed with the Regional Hearing Clerk, which is after completion of the notice and comment requirements of Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i) and 40 C.F.R. §§ 22.38, 22.45.

**Hartford Wood River Terminal, LLC, Respondent**

Matthew W. Schrimpf
Digitally signed by Matthew W. Schrimpf
Date: 2024.07.22 11:09:40 -05'00'

Date

Matthew W. Schrimpf, President
Hartford Wood River Terminal, LLC

**United States Environmental Protection Agency, Complainant**

DOUGLAS BALLOTTI
Digitally signed by DOUGLAS BALLOTTI
Date: 2024.08.01 08:49:47 -05'00'

Date

Douglas Ballotti
Director
Superfund and Emergency Management Division
U.S. Environmental Protection Agency, Region 5

## Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective 30 days after filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

By: ANN COYLE Digitally signed by ANN COYLE Date: 2024.09.24 10:12:33 -05'00' _____ Date: _____

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5