



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9, 75 Hawthorne Street, San Francisco CA 94105

EXPEDITED SPILL PREVENTION, CONTROL, AND COUNTERMEASURE
SETTLEMENT AGREEMENT

In the matter of Big Island Energy Co. LLC,
SPCC-09-2020-0063

On August 2, 2019, an authorized representative of the United States Environmental Protection Agency (EPA) conducted a formal inspection of Respondent's facility at 61-3641 Kawaihae Road, Kawaihae, Count of Hawaii, Hawaii, to determine compliance with the Oil Pollution Prevention regulations promulgated at 40 CFR Part 112 under Section 311(j) of the Clean Water Act, as amended, (33 U.S.C. §1321(j)), (the "Act" or "CWA"). EPA determined that Respondent, as owner or operator of the facility, violated regulations implementing Section 311(j) of the Act by failing to comply with the Oil Pollution Prevention regulations as noted on the attached Spill Prevention Control and Countermeasure Plan ("SPCC") Inspection Findings, Alleged Violations, and Proposed Penalty Form ("Violations Form") which is hereby incorporated by reference. By its signature below, EPA ratifies the inspection findings and alleged violations set forth in the Violations Form.

The parties enter into this Expedited Settlement in order to settle the civil violations described in the Violations Form for a penalty of \$1313. The parties are authorized to enter into this Expedited Settlement under the authority of Section 311(b) (6) (B) (i) of the Act, 33 U.S.C. § 1321(b) (6) (B) (i), and by 40 C.F.R. § 22.13(b).

This settlement is subject to the following terms and conditions:

EPA finds the Respondent is subject to the Oil Pollution Prevention regulations, and has violated the regulations as further described in the Violations Form. Respondent admits it is subject to the Oil Pollution Prevention regulations and that EPA has jurisdiction over Respondent and Respondent's conduct as described in the Violations Form. Respondent neither admits nor denies the facts in the first paragraph of this Settlement Agreement or allegations in the Violations Form, and waives any objections it may have to EPA's jurisdiction. Respondent consents to the assessment of the penalty stated above.

Respondent further certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the violations identified in the Violations Form have been corrected and the facility is now in full compliance with the Oil Pollution Prevention regulations (or that the violations will be corrected and the

facility brought into full compliance with the Oil Pollution Prevention regulations within an alternative time frame agreed to by EPA in writing). Respondent, in accordance with the attached Payment Instructions, has provided payment of the civil penalty.

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

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

This Expedited Settlement is binding on the parties signing below and is effective upon filing with the Regional Hearing Clerk pursuant to 40 C.F.R. § 22.31(b). The parties consent to service of this Expedited Settlement Agreement and Final Order by e-mail at the following valid e-mail addresses: adams.connor@epa.gov and owens.jon@epa.gov (for Complainant), and joe@garlowpetroleum.com, alec@mauioil.com, paul@mauioil.com (for Respondent).

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

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

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

APPROVED BY EPA:

AMY MILLER-BOWEN Digitally signed by AMY MILLER-BOWEN
Date: 2020.09.01 11:06:37 -07'00' Date: _____

Delegated Official

APPROVED BY RESPONDENT:

Name: Alexander J.W. McBarnet, Jr.

Title: Chief Executive Officer / Member

Signature:  Date: 8/24/2020

IT IS SO ORDERED:

STEVEN JAWGIEL Digitally signed by STEVEN JAWGIEL
Date: 2020.09.04 10:11:52 -07'00' Date: _____

Regional Judicial Officer

**** FILED ****
04 SEP 2020
U.S. EPA - REGION IX

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

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

Company Name
Big Island Energy

Docket Number
SPCC-09-2020-____

Facility Name
Kawaihae Terminal

Date
8.02.2019

Address
61-3641 Kawaihae Road

Facility ID Number
R9-HI-00047

City
Kawaihae

Inspector's Name
Connor Adams

State **Zip Code**
HI 96743

EPA Approving Official
Amy C. Miller-Bowen

Contact
Paul M. Oliveira- Chief Operations Officer

Enforcement Contact
Connor Adams- Inspector

Total Storage Capacity
<8,000 gallons



Summary of Findings (Bulk Storage Facilities)

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

- | | | |
|-------------------------------------|--|---------|
| <input checked="" type="checkbox"/> | Failure to have a Spill Prevention Control and Countermeasure Plan 112.3 (\$1,750) | \$1,750 |
| <input type="checkbox"/> | Plan or sections of the hybrid plan are not certified by a professional engineer * 112.3(d) (\$500)
*Not applicable to Qualified facilities unless a hybrid (PE/QF plan) see Qualified facility 112.6 section | |
| <input type="checkbox"/> | Certification lacks one or more required elements 112.3(d)(1) (\$125) | |
| <input type="checkbox"/> | Plan not maintained on site (if manned at least four hrs/day) or not available for review 112.3(e)(1) (\$350) | |
| <input type="checkbox"/> | No evidence of five-year review of plan by owner/operator 112.5(b) (\$100) | |
| <input type="checkbox"/> | No plan amendment(s) if the facility has had a change in: design, construction, operation, or maintenance which affects the facility's discharge potential 112.5(a) (\$100) | |
| <input type="checkbox"/> | Amendment(s) not certified by a professional engineer 112.5(c) (\$175) | |
| <input type="checkbox"/> | No management approval of plan 112.7 (\$500) | |
| <input type="checkbox"/> | Plan does not follow sequence of the rule and/or cross-reference not provided 112.7 (\$175) | |
| <input type="checkbox"/> | Plan does not discuss additional procedures/methods/equipment not yet fully operational 112.7 (\$100) | |

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

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

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

- Qualified Facility: Environmental Equivalence or Impracticability not certified by PE 112.6(b)(4) (\$400)

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

- Plan does not include inspections and test procedures in accordance with 40 CFR Part 112 112.7(e) (\$100)
- Inspections and tests required are not in accordance with written procedures developed for the facility 112.7(e) (\$100)
- No Inspection records were available for review 112.7(e) (\$225)
- (Written procedures and/or a record of inspections and/or customary business records)
- Inspection records are not signed by appropriate supervisor or inspector 112.7(e) (\$100)
- Inspection records are not maintained for three years 112.7(e) (\$100)

PERSONNEL TRAINING AND DISCHARGE PREVENTION PROCEDURES: 40 C.F.R. 112.7(f)

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

SECURITY (excluding Production Facilities): 40 C.F.R. 112.7(g)

- Plan does not describe how the facility secures and controls access to the oil handling, processing and storage areas 112.7(g)(1) (\$175)
- Master flow and drain valves not secured 112.7(g)(2) (\$350)
- Starter controls on pumps not secured to prevent unauthorized access- 112.7(g) (\$100)
- Out-of-service and loading/unloading connection(s) of piping/pipelines not adequately secured 112.7(g)(4) (\$100)
- Plan does not address the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges 12.7(g) (\$175)

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

- Inadequate secondary containment, and/or rack drainage does not flow to catchment basin treatment system, or quick drainage system 112.7(h)(1) (\$850)
- Containment system does not hold at least the maximum capacity of the largest single compartment of any tank car or tank truck 112.7(h)(1) (\$525)
- There are no interlocked warning lights, or physical barrier system, or warning signs, or vehicle brake interlock

system to prevent vehicular departure before complete disconnect from transfer lines- 112.7(h)(2) (\$350)

- There is no inspection of lowermost drains and all outlets prior to filling and departure of any tank car or tank truck- 112.7(h)(3) (\$175)
- Plan has inadequate or no discussion of facility tank car and tank truck loading/unloading rack 112.7(a)(1) (\$100)

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

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

FACILITY DRAINAGE: 40 C.F.R 112.8(b) & (c) and/or 112.12(b) & (c)

- Secondary Containment circumvented due to containment bypass valves left open and/or pumps and ejectors not manually activated to prevent a discharge 112.8(b)(1)and(2), and 112.8(c)(3)(i) (\$700)
- Dike water is not inspected prior to discharge and/or valves not open & resealed under responsible supervision 112.8(c)(3)(ii)and(iii) (\$525)
- Adequate records (or NPDES permit records) of drainage from diked areas not maintained 112.8(c)(3)(iv) (\$100)
- Drainage from undiked areas do not flow into catchment basins ponds or lagoons, or no diversion system to retain or return a discharge to the facility 112.8(b)(3)and(4) (\$525)
- Two “lift” pumps are not provided for more that one treatment unit 112.8(b)(5) (\$75)
- Plan has inadequate or no discussion of facility drainage 112.7(a)(1) (\$100)

BULK STORAGE CONTAINERS: 40 C.F.R. 112.7(i), 112.8(c) and/or 112.12(c)

- Failure to conduct evaluation of field-constructed aboveground containers for risk of discharge or failure due to brittle fracture or other catastrophe 112.7(i) \$350
- Material and construction of containers not compatible to the oil stored and the conditions of storage such as pressure and temperature 112.8(c)(1) (\$525)
- Secondary containment is inadequate 112.8(c)(2) (\$850)
- Secondary containment systems are not sufficiently impervious to contain oil 112.8(c)(2) (\$425)
- Completely buried tanks installed after August 16, 2002 are not protected from corrosion or are not subjected to regular pressure testing 112.8(c)(4) (\$175)
- Buried sections of partially burried metallic tans are not prootected from corrosion 112.8(c)(5) (\$175)
- Aboveground tanks are not subject to visual inspections 112.8(c)(6) (\$525)
- Aboveground tanks are not subject to periodic integrity testing techniques such as visual inspections hydrostatic testing, or other nondestructive methods 112.8(c)(6) (\$525)
- Records of inspections (or customary business records) do not include inspections of container supports/ foundation, signes of container deterioration, discharges and/or accumulations of oil inside diked areas 112.8(c)(6)

- Steam return/exhaust of internal heating coils which discharge into an open water course are not monitored, passed through a settling tank, skimmer or other separation system 112.8(c)(7) (\$175)
- Container installations are not engineered or updated in accordance with good engineering practice because none of the following are present: 112.8(c)(8) (\$525)
 - high liquid level alarm with audible or visual signal, or audible air vent 112.8(c)(8)(i)
 - high liquid level pump cutoff devices set to stop flow at a predetermined level 112.8(c)(8)(ii)
 - direct audible or code signal communication between container gauger and pumping station 112.8(c)(8)(iii)
 - fast response system for determining liquid level of each bulk storage container, or direct vision gauges with a person present to monitor gauges and the overall filling of bulk storage containers 112.8(c)(8)(iv)
- No testing of liquid level sensing devices to ensure proper operation 112.8(c)(8)(v) (\$100)
- Effluent treatment facilities not observed frequently to detect possible system upsets that could cause a discharge as described in §112.1(b)- 112.8(c)(9) (\$175)
- Causes of leaks resulting in accumulations of oil in diked areas are not promptly corrected 112.8(c)(10) (\$525)
- Mobile or portable storage containers are not positioned or located to prevent discharged oil from reaching navigable water or have inadequate secondary containment 112.8(c)(11) (\$175)
- Secondary containment inadequate for mobile or portable storage tanks 112.8(c)(11) (\$600)
- Plan has inadequate or no discussion of bulk storage tanks 112.7(a)(1) (\$100)

FACILITY TRANSFER OPERATIONS, PUMPING, AND FACILITY PROCESS: 40 C.F.R. 112.8(d) and 112.12(d)

- Buried piping is not corrosion protected with protective wrapping, coating or cathodic protection protection 112.8(d)(1) (\$175)
- Corrective action is not taken on exposed sections of buried piping when deterioration is found 112.8(d)(1) (\$525)
- Not-in-service or standby piping is not capped or blank-flanged and marked as to origin 112.8(d)(2) (\$100)
- Pipe supports are not properly designed to minimize abrasion and corrosion, and allow for expansion and contraction 112.8(d)(3) (\$100)
- Aboveground valves, piping and appurtenances are not inspected regularly 112.8(d)(4) (\$350)
- Periodic integrity and leak testing of buried piping is not conducted at time of installation, modification, construction, relocation, or replacement 112.8(d)(4) (\$175)
- Vehicle traffic is not warned of aboveground piping or other oil transfer operations 112.8(d)(5) (\$175)
- Plan has inadequate or no discussion of facility transfer operations, pumping, and facility process 112.7(a)(1) (\$100)

SUB TOTAL	\$1,750
Multiplier	0.75
Total	\$1,313

CERTIFICATE OF SERVICE

This is to certify that the original of the fully executed Consent Agreement and Final Order in the matter of Big Island Energy Co. LLC (SPCC-09-2020-0063) was filed with the Regional Hearing Clerk and that a true and correct copy of the same was sent to the following parties:

FOR RESPONDENT: Alexander J.W. McBarnet, Jr.
 Chief Executive Officer/Member
 Big Island Energy Co. LLC
 Alec@mauioil.com

FOR COMPLAINANT: Jon Owens
 Office of Regional Counsel
 U.S. EPA, Region IX
 Owens.Jon@epa.gov

Steven Armsey
Regional Hearing Clerk
Office of Regional Counsel, Region IX

Date