BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: ACHILLES USA, INC. Everett, Washington Respondent.	DOCKET NO. CWA-10-2020-0087 **CONSENT AGREEMENT** Proceedings Under Section 311(b)(6) of the Clean Water Act, 33 U.S.C. § 1321(b)(6)

I. STATUTORY AUTHORITY

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

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

1.3. CWA Section 311(b)(6)(B), 33 U.S.C. § 1321(b)(6)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed $10,000 per day for each day during which the violation continues, up to a maximum penalty of $125,000. Pursuant to the 2015 amendments to the Federal Civil Penalty Inflation Adjustment Act, 28 U.S.C. § 2461, and 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed $19,277 per day for each day during which the violation continues, up to a maximum penalty of $240,960. *See* 85 Fed. Reg. 1751 (January 13, 2020) (2020 Civil Monetary Penalty Inflation Adjustment Rule).

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

II. PRELIMINARY STATEMENT

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

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

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

III. ALLEGATIONS

Statutory and Regulatory Framework

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

3.2. CWA Section 311(j), 33 U.S.C. § 1321(j), provides for the regulation of onshore

facilities to prevent or contain discharges of oil. CWA Section 311(j)(l)(C), 33 U.S.C. § 1321(j)(l)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore facilities . . . and to contain such discharges . . . ."

3.3. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(l) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA his Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities.

3.4. Pursuant to these delegated statutory authorities and pursuant to its authorities under the CWA, 33 U.S.C. § 1251 *et seq.*, to implement Section 31l(j), the EPA promulgated the Oil Pollution Prevention (OPP) regulations in 40 C.F.R. Part 112, which set forth procedures, methods and equipment and other requirements to prevent the discharge of oil from non-transportation-related onshore facilities into or upon the navigable waters of the United States or adjoining shorelines, including requirements for preparation and implementation of a Spill Prevention Control and Countermeasure (SPCC) Plan.

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

3.6. The regulations define "person" to include any individual, firm, corporation, association, or partnership. 40 C.F.R. § 112.2.

3.7. The regulations define "onshore facility" to mean any facility of any kind located

in, on, or under, any land within the United States other than submerged lands. 40 C.F.R. § 112.2.

3.8. In the case of an onshore facility, the regulations define "owner or operator" to include any person owning or operating such onshore facility. 40 C.F.R. § 112.2.

3.9. The regulations define "oil" to mean oil of any kind or in any form, including, but not limited to, vegetable oils, petroleum, fuel oil, sludge, synthetic oils, oil refuse, and oil mixed with wastes other than dredged spoil. 40 C.F.R. § 112.2.

3.10. Non-transportation-related, as applied to an on-shore facility is defined to include industrial, commercial, agricultural or public facilities which use and store oil. 40 C.F.R. § 112.2 App. A.

3.11. CWA Section 502(7) defines "navigable waters" to mean "waters of the United States, including the territorial seas." 33 U.S.C. §1362(7); *see also* 40 C.F.R. § 112.2. In turn, "waters of the United States" has been defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide and tributaries to such waters. *See* 40 C.F.R. § 112.2 (1993).

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

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

General Allegations

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

3.15. At all times relevant to this Consent Agreement, Respondent was the "owner or operator," 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 of the facility located at 1407 80th Street Southwest in Everett, Washington (Facility).

3.16. The Facility, which is located in an industrial area in the southwestern-most part of Everett, Washington, manufactures various plastic film products and other plastic-based materials. At all times relevant to this Consent Agreement, the Facility was operating 24-hours a day, 365 days per year. The Facility currently operates Monday through Friday, 7:00 a.m. to 7:00 p.m.

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

3.18. The Facility is "non-transportation-related" within the meaning of 40 C.F.R. § 112.2.

3.19. The State of Washington Department of Ecology (Ecology) notified Complainant of its investigation into two July 2018 incidents that resulted in oil spills to the Facility's West Stormwater Detention Pond, which is regulated under Ecology's industrial stormwater general permit (ISGP).

3.20. On May 15, 2019, authorized EPA representatives inspected the Facility to determine compliance with Section 311(j) of the CWA, and in particular with the requirements of 40 C.F.R. Part 112.

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

3.22. At the time of the inspection, the Facility had an aggregate above-ground storage (AST) capacity greater than 1,320 gallons of oil in containers, each with a shell capacity of at least 55 gallons.

3.23. Respondent acknowledges that oil products might discharge from the Facility into or on the navigable waters of the United States. The Facility is served by a stormwater system that includes two stormwater detention ponds, the East Stormwater Detention Pond and the West Stormwater Detention Pond. Runoff from the CPP Building and from surfaces immediately to the north and east of the CPP Building travels through storm drains into the East Stormwater Detention Pond, which is located approximately 100 feet to the east of the CPP Building. The West Stormwater Detention Pond system serves the majority of the industrial portions of the Facility. The West Stormwater Detention Pond discharges through a manhole equipped with a gate valve to the City of Everett stormwater drainage system. The City of Everett stormwater drainage system drains to Narbeck Creek, which empties into the Puget Sound approximately eight miles downstream. Surface water flow to the east has the potential to drain to Merrill and Ring Creek, which is located approximately one-quarter mile to the east. Merrill and Ring Creek drains to the north and also discharges into Puget Sound.

3.24. Floor drains within Facility buildings also provide a pathway to Puget Sound. The building floor drains are either dead end sumps or are connected to an oil water separator (OWS) that discharges to the sanitary sewer before entering the City of Everett publicly owned treatment works (POTW). Other building drainage lines connect directly to the sanitary sewer before entering the POTW. The POTW discharges into Puget Sound.

3.25. Puget Sound is currently used for interstate commerce and is subject to the ebb and flow of the tide. As such, Puget Sound is a navigable water within the meaning of CWA § 502(7), 33 U.S.C. § 1362(7).

3.26. Accordingly, the Facility is a non-transportation-related, onshore facility that, due to its location, could reasonably have been expected, at the time of inspection, to discharge oil into or upon the navigable waters of the United States or adjoining shorelines in a harmful quantity. The Facility is therefore subject to the SPCC regulations at 40 C.F.R. Part 112.

3.27. Under 40 C.F.R. § 112.3, the owner or operator of an SPCC-regulated facility that was in operation on or before August 16, 2002, shall have prepared and implemented a written SPCC Plan that complies with 40 C.F.R. § 112.3 and other applicable sections of 40 C.F.R. Part 112. The Facility began operating before August 16, 2002 and is therefore required to prepare and implement a written SPCC Plan.

3.28. At the time of EPA's May 2019 SPCC inspection, Achilles operated its oil spill prevention program using its April 2016 SPCC Plan.

Violations

Count 1 – Certification Violations

3.29. The regulation at 40 C.F.R. § 112.3 requires the owner or operator of an onshore facility to prepare in writing and implement an SPCC Plan in accordance with 40 C.F.R. § 112.7. The regulation at 40 C.F.R. § 112.3.(d) requires, in relevant part, that a licensed Professional Engineer (PE) review and certify the SPCC Plan. By means of this certification the PE must attest that he is familiar with the requirements of Part 112; that he or his agent has visited and examined the facility; and that procedures for required inspections and testing have been established.

3.30. Respondent included an incomplete PE certification in its 2016 SPCC Plan that

did not attest that the PE was familiar with the requirements of Part 112; that the PE or his agent visited and examined the facility; and that procedures for required inspections and testing had been established, in violation of 40 C.F.R. § 112.3(d).

3.31. The regulation at 40 C.F.R. § 112.20(e) provides that if the owner or operator of a facility determines in accordance with the regulations that the facility could not, because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines, the owner or operator shall complete and maintain at the facility the Substantial Harm Certification contained in Part 112, Appendix C.

3.32. Respondent included an unsigned Substantial Harm Certification in its 2016 SPCC Plan, in violation of 40 C.F.R. § 112.20(e).

Count 2 – Storage, Facility Drainage, and Secondary Containment Violations

3.33. The regulation at 40 C.F.R. § 112.7(a)(3)(i) requires that a facility address in its SPCC Plan the type of oil in each fixed container and its storage capacity. For mobile or portable containers, the regulation requires the facility to provide either the type of oil and storage capacity for each container or an estimate of the potential number of mobile or portable containers, the types of oil, and anticipated storage capacities.

3.34. Respondent did not identify in its 2016 SPCC Plan a dual chamber 250-gallon soybean oil/miscellaneous oil tank and a diesel fuel-powered generator (genset) 110-gallon double wall tank that exist at the Facility and incorrectly referred to two 14,000-gallon diesel fuel tanks, which upon inspection, do not exist at the Facility, in violation of 40 C.F.R. § 112.7(a)(3)(i).

3.35. The regulation at 40 C.F.R. § 112.8(b)(3) requires that facility drainage systems from undiked areas with a potential for a discharge must flow into ponds, lagoons, or catchment basins designed to retain oil or return it to the facility. The regulation at 40 C.F.R. § 112.8(b)(4)

provides that if facility drainage is not engineered as in paragraph (b)(3), the final discharge of all ditches inside the facility must be equipped with a diversion system that will, in the event of an uncontrolled discharge, retain oil in the facility.

3.36. Respondent stated in its 2016 SPCC Plan that the Facility includes a drainage collection system and an OWS that is used as containment for spill sources outside the containment areas. However, Respondent did not explain how oil that entered box drains and drained into the stormwater drainage collection system would be diverted and retained at the Facility, in violation of 40 C.F.R. § 112.8(b)(3) and (b)(4).

3.37. The regulation at 40 C.F.R. § 112.7(a)(2) provides that a facility may deviate from certain requirements if the facility provides equivalent environmental protection by some other means of spill prevention, control, or countermeasure. If the facility deviates from the drainage requirements listed in Part 112, the facility must state in the SPCC Plan the reasons for nonconformance and describe in detail the alternative methods and how those methods will achieve equivalent environmental protection.

3.38. Respondent stated in its 2016 SPCC Plan that the Facility includes a drainage collection system and an OWS that is used as containment for spill sources outside the containment areas and that this OWS provides environmental protection equivalence to ponds, lagoons, or catchment basins required under Sections 112.8(b)(3) and (b)(4). However, Respondent did not state in the 2016 SPCC Plan the reasons for nonconformance with Sections 112.8(b)(3) and (b)(4) and did not describe in detail the alternative methods or how those methods achieve equivalent environmental protection, in violation of 40 C.F.R. §§ 112.7(a)(2) and 112.8(b)(3) and (b)(4).

3.39. The regulation at 40 C.F.R. § 112.7(a)(3)(ii) requires that a facility address in its SPCC Plan drainage prevention procedures for routine handling of products, such as during

loading, unloading, and transfer.

3.40. Respondent stated in its 2016 SPCC Plan that spill mats are used to cover floor drains and catch basins when bulk oils are unloaded and to cover storm drains during transfer procedures. Facility personnel could not confirm the use of spill mats during oil transfers, in violation of 40 C.F.R. § 112.7(a)(3)(ii).

3.41. The regulation at 40 C.F.R. § 112.7(a)(3)(iii) requires that a facility address in its SPCC Plan discharge or drainage control such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge.

a. Respondent did not identify or discuss in its 2016 SPCC Plan drainage and discharge control measures for oil-filled operating equipment, including the thermal oil heating system and oil piping, in violation of 40 C.F.R. § 112.7(a)(3)(iii).

b. Respondent did not describe in its 2016 SPCC Plan the function of the five calendar pits as secondary containment, in violation of 40 C.F.R. § 112.7(a)(3)(iii).

c. Respondent stated in its 2016 SPCC Plan that floor drains inside the buildings capture spilled material but did not discuss or describe the multiple OWSs installed in the building sanitary sewer system to which the floor drains flow, in violation of 40 C.F.R. § 112.7(a)(3)(iii).

d. Respondent incorrectly stated in its 2016 SPCC Plan that the stormwater collection system for the northwest portion of the Facility drained into an OWS system comprised of three 1000-gallon capacity OWSs, in violation of 40 C.F.R. § 112.7(a)(3)(iii). The three stormwater collection system OWSs have overall structural capacities (i.e., volume) of 774, 860, and 1500 gallons but smaller oil retention capacities (i.e., 283, 469 and 818 gallons respectively).

e. Respondent did not identify or discuss in its 2016 SPCC Plan that the

waste oil tank storage area, which contains two single walled waste oil tanks with 400- and 625-gallon oil storage capacities, drained to an undersized 251-gallon oil storage capacity OWS that drained to the sanitary sewer system, in violation of 40 C.F.R. § 112.7(a)(3)(iii).

3.42. The regulation at 40 C.F.R. § 112.7(c) requires a facility provide adequate containment and/or diversionary structures or equipment to prevent a discharge. The entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary containment system, such as a tank, will not escape the containment system before cleanup occurs.

a. Respondent acknowledged in its 2016 SPCC Plan the lack of adequate secondary containment for two waste oil tanks, in violation of 40 C.F.R. § 112.7(c).

b. Respondent acknowledged in its 2016 SPCC Plan the lack of secondary containment for mobile thermal oil tanks and drums/totes located in Buildings B and C. Respondent stated in its 2016 SPCC Plan that the buildings themselves function as secondary containment but did not explain the basis for concluding that buildings with floor drains that drain to the sanitary sewer system provide adequate secondary containment, in violation of 40 C.F.R. § 112.7(c).

c. Respondent did not address in its 2016 SPCC Plan secondary containment for oil piping, in violation of 40 C.F.R. § 112.7(c).

d. Respondent stated in its 2016 SPCC Plan that spill mats are used to cover floor drains and catch basins when oil is transferred near drains and catch basins. Facility personnel could not confirm the use of spill mats, in violation of 40 C.F.R. § 112.7(c).

e. Respondent did not explain in its 2016 SPCC Plan how the calendar pits, the sump and collection system, or the OWSs in the sanitary sewer system provide

secondary containment, in violation of 40 C.F.R. § 112.7(c).

3.43. The regulation at 40 C.F.R. § 112.8(c)(2) requires, in relevant part, that all bulk storage tank installations be constructed to provide a means of secondary containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation.

3.44. Respondent acknowledged in its 2016 SPCC Plan the lack of adequate secondary containment for two waste oil tanks, in violation of 40 C.F.R. § 112.8(c)(2).

3.45. The regulation at 40 C.F.R. § 112.8(c)(11) requires that a facility furnish a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation for mobile or portable oil storage containers except for mobile refuelers and other non-transportation-related tank trucks.

3.46. Respondent acknowledged in its 2016 SPCC Plan that no secondary containment existed for mobile or portable containers located within Buildings B and C of the Facility and did not explain how adequately sized secondary containment is provided by floor drains that are connected to the sanitary sewer, in violation of 40 C.F.R. § 112.8(c)(11).

Count 3 - Inspection Violations

3.47. The regulation at 40 C.F.R. § 112.7(e) requires that a facility conduct inspections and tests in accordance with written procedures that the facility or the certifying engineer develop for the facility. The facility must keep these written procedures and a record of the inspections and tests, signed by the appropriate supervisor or inspector, with the SPCC Plan for a period of three years.

a. Respondent identified in its 2016 SPCC Plan the Steel Tank Institute's (STI) SP-001 for tank integrity tests and inspections but had no SP-001 inspection checklists and no other inspection procedures for bulk storage containers. Respondent's

2016 SPCC Plan indicated that personnel conducted monthly and annual inspections in accordance with STI SP-001 and identifies a monthly checklist. However, no monthly checklist was included in the Plan and no completed inspection checklists were available during the May 2019 inspection. The Facility's 2016 SPCC Plan included a weekly inspection checklist which covered only drums in hazardous waste accumulation areas and the Facility's stormwater checklist did not specify bulk storage containers. Facility personnel acknowledged during the May 2019 inspection that no SPCC Plan-based tank-specific inspections were conducted, in violation of 40 C.F.R. § 112.7(e).

b. The regulation at 40 C.F.R. § 112.7(a)(2) provides that a facility may deviate from certain requirements if the facility provides equivalent environmental protection by some other means of spill prevention, control, or countermeasure. If the facility deviates from the inspection requirements listed in Part 112, the facility must state in the SPCC Plan the reasons for nonconformance and describe in detail the alternative methods and how those methods will achieve equivalent environmental protection. Respondent did not state in its 2016 SPCC Plan the reasons for nonconformance with STI SP-001 and did not provide a detailed description of the alternative measures to formal inspections and how such alternative measures would achieve environmental protection, in violation of 40 C.F.R. §§ 112.7(a)(2) and 112.7(e).

3.48. The regulation at 40 C.F.R. § 112.8(c)(6) requires that a facility test or inspect each above-ground container for integrity on a regular schedule. The facility must determine, in accordance with industry standards, the appropriate qualifications for personnel performing tests and inspections and the frequency and type of inspections, which take into account container size, configuration, and design.

a. Respondent identified in its 2016 SPCC Plan that STI SP-001 dictates the

scope and schedule for above-ground storage tank integrity tests and inspections, and that the tanks at the Facility as Category 1 tanks, subject to periodic inspections, but states that formal SP-001 external inspections are not required. In light of its assertion that SP-001 inspections are not required, Respondent's SPCC Plan did not include a frequency or schedule for inspections for above-ground storage tanks or provisions for retention of integrity testing records, in violation of 40 C.F.R. § 112.8(c)(6).

b. Respondent did not identify in its 2016 SPCC Plan provisions for inspection of tank foundations and supports, and oil accumulations inside diked areas, in violation of 40 C.F.R. § 112.8(c)(6).

c. Respondent indicates in its 2016 SPCC Plan that Facility personnel perform monthly and annual inspections in accordance with SP-001; however, Facility personnel acknowledged during the May 2019 inspection that SPCC Plan-based tank-specific inspections were not conducted, in violation of 40 C.F.R. § 112.8(c)(6).

d. The regulation at 40 C.F.R. § 112.7(a)(2) provides that a facility may deviate from certain requirements if the facility provides equivalent environmental protection by some other means of spill prevention, control, or countermeasure. If the facility deviates from the inspection requirements listed in Part 112 (e.g., a deviation from an industry standard incorporated into its SPCC Plan), the facility must state in the SPCC Plan the reasons for nonconformance and describe in detail the alternative methods and how those methods will achieve equivalent environmental protection. Respondent did not state in its 2016 SPCC Plan the reasons for nonconformance with Section 112.8(c)(6) and does not describe in detail alternative methods or how the Facility will achieve equivalent environmental protection, in violation of 40 C.F.R. §§ 112.7(a)(2) and 112.8(c)(6).

Count 4 – Miscellaneous Violations

3.49. The regulation at 40 C.F.R. § 112.7 requires, in relevant part, that if the SPCC Plan calls for additional facilities or procedures, methods, or equipment not yet fully operational, the Plan must discuss these items in separate paragraphs, and must explain separately the details of installation and operational start-up.

3.50. Respondent indicated in the 2016 SPCC Plan a lack of adequate secondary containment for its waste oil storage area containing two waste oil tanks but did not describe or discuss the lack of adequate secondary containment in separate paragraphs and did not explain separately the details of installation and operational start-up, in violation of 40 C.F.R. § 112.7.

3.51. The regulation at 40 C.F.R. § 112.7(a)(5) requires a facility to organize portions of its SPCC Plan that describe procedures it will use when a discharge occurs in a way that will make them readily usable in an emergency and include appropriate supporting material as appendices.

3.52. Respondent did not completely and accurately reflect in its 2016 SPCC Plan all of the procedures it would use if a discharge occurred. Respondent did not include all information required under 40 C.F.R. § 112.7(a)(4) and relied on Standard Operating Procedure (SOP) documents that required personnel to cross-reference, reconcile, and understand the differences between SPCC Plan sections in a way that negatively affected the readily usable nature of the procedures in an emergency, in violation of 40 C.F.R. 112.7(a)(5).

3.53. The regulation at 40 C.F.R. 112.7(a)(4) provides that a facility must provide in its SPCC Plan information and procedures to enable a person reporting a discharge to relate information on the exact address or location and phone number of the facility; the date and time of the discharge, the type of material discharged; estimates of the total quantity discharged; estimates of the quantity discharged as described in § 112.1(b); the source of the discharge; a

description of all affected media; the cause of the discharge; any damages or injuries caused by the discharge; actions being used to stop, remove, and mitigate the effects of the discharge; whether an evacuation may be needed; and, the names of individuals and/or organizations who have also been contacted.

3.54. Respondent did not include in its 2016 SPCC Plan certain reporting elements, including the phone number of the Facility; estimates of quantity discharged off-site to water; the cause of the discharge; and damages or injuries, if any, caused by the discharge, in violation of 40 C.F.R. § 112.7(a)(4).

3.55. The regulation at 40 C.F.R. § 112.7(b) requires that, where experience indicates a reasonable potential for equipment failure, a facility must include in its SPCC Plan a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure. Respondent contemplated in its 2016 SPCC Plan that there is a reasonable potential for equipment failure of one type (e.g., equipment failure that could result in a spill outside the buildings) and listed the potential discharge volumes and direction of flow associated with a potential release due to such equipment failure.

3.56. Respondent did not include in its 2016 SPCC Plan a predicted rate of flow or predicted total quantity of discharged oil. Additionally, Respondent did not address in its 2016 SPCC Plan additional types of potential major equipment failures such as in transfer areas, oil-filled operating equipment (OFOE) or container overfilling (e.g., calendar pit overflows), in violation of 40 C.F.R. § 112.7(b).

3.57. The regulation at 40 C.F.R. § 112.7(f) requires that, at a minimum, a facility train its oil-handling personnel in the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and the contents of the facility's SPCC Plan.

3.58. Respondent conducted annual general environmental awareness training, including training on stormwater best management practices and spill response but did not conduct training that covered all elements of subpart 112.7(f) or the contents of the 2016 SPCC Plan, in violation of 40 C.F.R. § 112.7(f).

3.59. Respondent's failure to comply with the requirements of 40 C.F.R Part 112 subjects it to civil penalties pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 321(b)(6)(B)(ii).

IV. TERMS OF SETTLEMENT

4.1. For purposes of this settlement, Respondent admits the jurisdictional allegations of this Consent Agreement.

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

4.3. As required by CWA Section 311(b)(8), 33 U.S.C. § 1321(b)(8), EPA has taken into account the seriousness of the alleged violations; Respondent's economic benefit of noncompliance; the degree of culpability involved; any other penalty for the same incident; any history of prior violations; the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge; the economic impact of the penalty on the violator; and any other matters as justice may require. After considering all of these factors, EPA has determined that an appropriate penalty to settle this action is $45,000.

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

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: http://www2.epa.gov/financial/makepayment. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

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

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

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

Rick Cool
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
cool.richard@epa.gov

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

a. Interest. Pursuant to CWA Section 311(b)(6)(H), 33 U.S.C. § 1321(b)(6)(H), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

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

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

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

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

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

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

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

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

DATED:

5/18/20

FOR RESPONDENT:

MICHAEL BURROWS, Director of HR & Safety
Achilles USA, Inc.

DATED:

FOR COMPLAINANT:

LAURIS DAVIES Digitally signed by LAURIS DAVIES Date: 2020.07.06 08:35:53 -07'00'

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

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: ACHILLES USA, INC. Everett, Washington Respondent.	DOCKET NO. CWA-10-2020-0087 **FINAL ORDER** Proceedings Under Section 311(b)(6) of the Clean Water Act, 33 U.S.C. § 1321(b)(6)

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

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

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

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155, 11-C07
Seattle, Washington 98101
(206) 553-1037

4. This Final Order shall become effective upon filing.

SO ORDERED this _____ day of _____, 2020.

RICHARD MEDNICK

Digitally signed by RICHARD MEDNICK
Date: 2020.07.06 11:12:04 -07'00'

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

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155, 11-C07
Seattle, Washington 98101
(206) 553-1037