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6 Attorneys for PAUL OIL COMPANY,
INC.

U.S.EPA - Region 09

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9 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
10 REGION IX

11
12 IN THE MATTER OF
13 Paul Oil Company, Inc.
14
15 524 N. Sierra Ave.
Oakdale, CA 95361
16 Respondent.

) ANSWER TO ADMINISTRATIVE
) COMPLAINT AND REQUEST FOR
) HEARING AND REQUEST FOR
) SETTLEMENT CONFERENCE

) Docket No. OPA-09-2016-0004

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19 COMES NOW Paul Oil Company, Inc. ("Paul Oil" or "Respondent) submits its answer
20 to the Civil Administrative Complaint in the above-referenced matter ("Complaint").

21 **I. Statutory Authority**

22 1. In response to paragraph 1 of the Complaint, Respondent admits the allegations
23 therein.

24 2. In response to paragraph 2 of the Complaint, Respondent admits the allegations
25 therein.

26 **II. Allegations**

27 3. In response to paragraph 1 of the Complaint, Respondent admits the allegations
28 therein.

- 1 4. In response to paragraph 4 of the Complaint, Respondent admits the allegations
2 therein.
- 3 5. In response to paragraph 5 of the Complaint, Respondent admits the allegations
4 therein.
- 5 6. In response to paragraph 6 of the Complaint, Respondent admits the allegations
6 therein.
- 7 7. In response to paragraph 7 of the Complaint, Respondent admits the allegations
8 therein.
- 9 8. In response to paragraph 8 of the Complaint, Respondent admits the allegations
10 therein.
- 11 9. In response to paragraph 9 of the Complaint, Respondent admits the allegations
12 therein.
- 13 10. In response to paragraph 10 of the Complaint, Respondent admits to storing and
14 distributing oil products, but Respondent denies the remaining allegations therein.
- 15 11. In response to paragraph 11 of the Complaint, Respondent admits the allegations
16 therein.
- 17 12. In response to paragraph 12 of the Complaint, Respondent admits the allegations
18 therein.
- 19 13. In response to paragraph 13 of the Complaint, Respondent admits the allegations
20 therein.
- 21 14. In response to paragraph 14 of the Complaint, Respondent admits the allegations
22 therein.
- 23 15. In response to paragraph 15 of the Complaint, Respondent admits the allegations
24 therein.
- 25 16. In response to paragraph 16 of the Complaint, Respondent admits the allegations
26 therein.
- 27 17. In response to paragraph 17 of the Complaint, Respondent admits the allegations
28 therein.

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Count 1: Failure to Prepare an SPCC Plan

Paragraphs 1 through 17 above are hereby incorporated by reference.

18. In response to paragraph 18 of the Complaint, Respondent lacks sufficient information and on that basis denies the allegations therein.

19. In response to paragraph 19 of the Complaint, Respondent admits the allegations therein.

20. In response to paragraph 20 of the Complaint, Respondent admits the allegations therein.

21. In response to paragraph 21 of the Complaint, Respondent lacks sufficient information and on that basis denies the allegations therein.

22. In response to paragraph 22 of the Complaint, Respondent lacks sufficient information and on that basis denies the allegations therein.

23. In response to paragraph 23 of the Complaint, Respondent admits the allegations therein.

24. In response to paragraph 24 of the Complaint, Respondent denies that no plan has been prepared or corrected. Respondent lacks sufficient information and on that basis denies the remaining allegations therein.

Count 2: Failure to Prepare an SPCC Plan That has Proper Management Approval

Paragraphs 1 through 24 above are hereby incorporated by reference.

25. In response to paragraph 25 of the Complaint, Respondent lacks sufficient information and on that basis denies the allegations therein.

26. In response to paragraph 26 of the Complaint, Respondent admits the allegations therein.

27. In response to paragraph 27 of the Complaint, Respondent lacks sufficient information and on that basis denies the allegations therein.

1 28. In response to paragraph 28 of the Complaint, Respondent lacks sufficient
2 information and on that basis denies the allegations therein.

3 29. In response to paragraph 29 of the Complaint, Respondent denies that no correction
4 has been made. Respondent lacks sufficient information and on that basis denies the
5 allegations therein.

6
7 **Count 3: Failure to Include in the SPCC Plan The Type of Oil Stored in Mobile or**
8 **Portable Containers**

9 Paragraphs 1 through 29 above are hereby incorporated by reference.

10 30. In response to paragraph 30 of the Complaint, Respondent lacks sufficient
11 information and on that basis denies the allegations therein.

12 31. In response to paragraph 31 of the Complaint, Respondent admits the allegations
13 therein.

14 32. In response to paragraph 32 of the Complaint, Respondent admits the allegations
15 therein.

16 33. In response to paragraph 33 of the Complaint, Respondent lacks sufficient
17 information and on that basis denies the allegations therein.

18 34. In response to paragraph 34 of the Complaint, Respondent denies that no
19 correction has occurred. Respondent lacks sufficient information and on that basis denies the
20 remaining allegations therein.

21
22 **Count 4: Failure to Include in the SPCC Plan Information of Oil Discharges from**
23 **Failure of Major Equipment**

24 Paragraphs 1 through 34 above are hereby incorporated by reference.

25 35. In response to paragraph 35 of the Complaint, Respondent lacks sufficient
26 information and on that basis denies the allegations therein.

27 36. In response to paragraph 36 of the Complaint, Respondent admits the allegations
28 therein.

1 37. In response to paragraph 37 of the Complaint, Respondent lacks sufficient
2 information and on that basis denies the allegations therein.

3 38. In response to paragraph 38 of the Complaint, Respondent denies the allegations
4 therein.

5 39. In response to paragraph 39 of the Complaint, Respondent lacks sufficient
6 information and on that basis denies the allegations therein.

7 40. In response to paragraph 40 of the Complaint, Respondent denies that no correction
8 has occurred. Respondent lacks sufficient information and on that basis denies the remaining
9 allegations therein.

10
11 **Count 5: Failure to Provide Containment and/or Diversionary Structures or**
12 **Equipment to Prevent a Discharge**

13 Paragraphs 1 through 40 above are hereby incorporated by reference.

14 41. In response to paragraph 41 of the Complaint, Respondent lacks sufficient
15 information and on that basis denies the allegations therein.

16 42. In response to paragraph 42 of the Complaint, Respondent admits the allegations
17 therein.

18 43. In response to paragraph 43 of the Complaint, Respondent lacks sufficient
19 information and on that basis denies the allegations therein.

20 44. In response to paragraph 44 of the Complaint, Respondent admits the allegations
21 therein.

22 45. In response to paragraph 45 of the Complaint, Respondent admits the allegations
23 therein.

24 46. In response to paragraph 46 of the Complaint, Respondent denies that a full and
25 utilized tank was in place on gravel. Respondent lacks sufficient information and denies the
26 remaining allegations therein.

27 47. In response to paragraph 47, Respondent denies that any tanks were full or open.
28 Respondent lacks sufficient information and on that basis denies the remaining allegations

1 therein.

2 48. In response to paragraph 48 of the Complaint, Respondent lacks sufficient
3 information and on that basis denies the allegations therein.

4 49. In response to paragraph 49 of the Complaint, Respondent admits the allegations
5 therein.

6 50. In response to paragraph 50 of the Complaint, Respondent admits the allegations
7 therein.

8 51. In response to paragraph 51 of the Complaint, Respondent denies that no
9 correction has occurred. Respondent lacks sufficient information and on that basis denies the
10 remaining allegations therein.

11
12 **Count 6: Failure to Conduct Inspections and Test and Keep Appropriate Records**

13 Paragraphs 1 through 51 above are hereby incorporated by reference.

14 52. In response to paragraph 52 of the Complaint, Respondent lacks sufficient
15 information and on that basis denies the allegations therein.

16 53. In response to paragraph 53 of the Complaint, Respondent admits the allegations
17 therein.

18 54. In response to paragraph 54 of the Complaint, Respondent lacks sufficient
19 information and on that basis denies the allegations therein.

20 55. In response to paragraph 55 of the Complaint, Respondent lacks sufficient
21 information and on that basis denies the allegations therein.

22 56. In response to paragraph 56 of the Complaint, Respondent admits the allegations
23 therein.

24 57. In response to paragraph 51 of the Complaint, Respondent denies that no correction
25 has occurred. Respondent lacks sufficient information and on that basis denies the remaining
26 allegations therein.

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Count 7: Failure to Conduct Discharge Prevention Training

Paragraphs 1 through 57 above are hereby incorporated by reference.

58. In response to paragraph 58 of the Complaint, Respondent lacks sufficient information and on that basis denies the allegations therein.

59. In response to paragraph 59 of the Complaint, Respondent admits the allegations therein.

60. In response to paragraph 60 of the Complaint, Respondent lacks sufficient information and on that basis denies the allegations therein.

61. In response to paragraph 61 of the Complaint, Respondent lacks sufficient information and on that basis denies the allegations therein.

62. In response to paragraph 60 of the Complaint, Respondent lacks sufficient information and on that basis denies the allegations therein.

Count 8: Failure to Provide Professional Engineer Certification of the SPCC Plan

Paragraphs 1 through 62 above are hereby incorporated by reference.

63. In response to paragraph 63 of the Complaint, Respondent lacks sufficient information and on that basis denies the allegations therein.

64. In response to paragraph 64 of the Complaint, Respondent admits the allegations therein.

65. In response to paragraph 65 of the Complaint, Respondent admits the allegations therein.

66. In response to paragraph 66 of the Complaint, Respondent admits the allegations therein.

67. In response to paragraph 67 of the Complaint, Respondent denies that no correction has occurred. Respondent lacks sufficient information and on that basis denies the remaining allegations therein.

1 **Count 9: Failure to Equip Undiked Areas With a Diversion System to Retain Oil**

2 **Discharges in the Facility**

3 Paragraphs 1 through 67 above are hereby incorporated by reference.

4 68. In response to paragraph 68 of the Complaint, Respondent lacks sufficient
5 information and on that basis denies the allegations therein.

6 69. In response to paragraph 69 of the Complaint, Respondent admits the allegations
7 therein.

8 70. In response to paragraph 70 of the Complaint, Respondent admits the allegations
9 therein.

10 71. In response to paragraph 71 of the Complaint, Respondent admits the allegations
11 therein.

12 72. In response to paragraph 72 of the Complaint, Respondent lacks sufficient
13 information and on that basis denies the allegations therein.

14 73. In response to paragraph 73 of the Complaint, Respondent admits the allegations
15 therein.

16 74. In response to paragraph 74 of the Complaint, Respondent lacks sufficient
17 information and on that basis denies the allegations therein.

18 75. In response to paragraph 75 of the Complaint, Respondent admits the allegations
19 therein.

20 76. In response to paragraph 76 of the Complaint, Respondent admits that corrections
21 have been made. Respondent lacks sufficient information and on that basis denies the
22 remaining allegations therein.

23
24 **Count 10: Failure to Construct Sufficiently-Sized Secondary Containment for**

25 **Bulk Storage Tanks**

26 Paragraphs 1 through 76 above are hereby incorporated by reference.

27 77. In response to paragraph 77 of the Complaint, Respondent lacks sufficient
28 information and on that basis denies the allegations therein.

1 78. In response to paragraph 78 of the Complaint, Respondent admits the allegations
2 therein.

3 79. In response to paragraph 79 of the Complaint, Respondent lacks sufficient
4 information and on that basis denies the allegations therein.

5 80. In response to paragraph 80 of the Complaint, Respondent admits the allegations
6 therein.

7 81. In response to paragraph 81 of the Complaint, Respondent lacks sufficient
8 information and on that basis denies the allegations therein.

9 82. In response to paragraph 82 of the Complaint, Respondent denies that no correction
10 has occurred. Respondent lacks sufficient information and on that basis denies the remaining
11 allegations therein.

12
13 **Count 11: Failure to Conduct and Keep Records of Integrity Inspections for**
14 **Aboveground Containers, Container Supports, Foundations and Outside**
15 **Containers**

16 Paragraphs 1 through 82 above are hereby incorporated by reference.

17 83. In response to paragraph 83 of the Complaint, Respondent lacks sufficient
18 information and on that basis denies the allegations therein.

19 84. In response to paragraph 84 of the Complaint, Respondent admits the allegations
20 therein.

21 85. In response to paragraph 85 of the Complaint, Respondent lacks sufficient
22 information and on that basis denies the allegations therein.

23 86. In response to paragraph 86 of the Complaint, Respondent denies that any tanks
24 were in use. Respondent lacks sufficient information and on that basis denies the allegations
25 therein.

26 87. In response to paragraph 87 of the Complaint, Respondent denies that no correction
27 has occurred. Respondent lacks sufficient information and on that basis denies the remaining
28 allegations therein.

1 **III. Proposed Penalty**

2 88. In response to paragraph 88 of the Complaint, Respondent lacks sufficient
3 information and on that basis denies the allegations therein.

4 89. In response to paragraph 89 of the Complaint, Respondent lacks sufficient
5 information and on that basis denies the allegations therein.

6 90. In response to paragraph 90 of the Complaint, Respondent lacks sufficient
7 information and on that basis denies the allegations therein.

8
9 **IV. Procedures Governing this Administrative Litigation**

10 91. In response to paragraph 91 of the Complaint, Respondent lacks sufficient
11 information and on that basis denies the allegations therein.

12 92. In response to paragraph 92 of the Complaint, Respondent lacks sufficient
13 information and on that basis denies the allegations therein.

14 93. In response to paragraph 93 of the Complaint, Respondent lacks sufficient
15 information and on that basis denies the allegations therein.

16 94. In response to paragraph 94 of the Complaint, Respondent lacks sufficient
17 information and on that basis denies the allegations therein.

18 **VI. REQUEST FOR HEARING**

19 95. Respondent hereby requests a hearing, including a request for an oral hearing, on
20 the allegations, claims and penalties herein.

21 96. In response to paragraph 96 of the Complaint, Respondent lacks sufficient
22 information and on that basis denies the allegations therein.

23
24 **SETTLEMENT CONFERENCE REQUEST**

25 97. Respondent requests a settlement procedure as set forth in 40 C.F.R. §22.18(b)(2),
26 and Respondent further requests an informal conference with Complainant as set forth in
27 paragraph 123 of the Complaint.

1 **GENERAL PROVISIONS**

2 98. In response to paragraph 98 of the Complaint, Respondent admits the allegations
3 therein.

4 99. In response to paragraph 99 of the Complaint, Respondent lacks sufficient
5 information and on that basis denies the allegations therein.

6 100. In response to paragraph 100 of the Complaint, Respondent lacks sufficient
7 information and on that basis denies the allegations therein.

8
9 **AFFIRMATIVE DEFENSES**

10 101. As a first affirmative defense, Respondent alleges that Respondent lacks the ability
11 to pay and that the proposed penalties are not appropriate due to: the size of the facility; the
12 size of the Respondent; the revenue and expense associated with the facility; the compliance
13 history at the facility; the history of Respondent; the economic effect on the Respondent; the
14 minimal culpability involved; the lack of substantial or dangerous discharge; the economic
15 effect on the Respondent and the facility; all the relevant facts and circumstances regarding the
16 facility, the Respondent, or the Complaint; and any other matters that justice requires.

17 102. As a second affirmative defense, Respondent alleges on information and belief that
18 this proceeding violates the Fifth, Tenth and Seventh Amendments to the U.S. Constitution.

19 103. As a third affirmative defense, Respondent alleges on information and belief that
20 Respondent was not aware of many of the alleged facts, circumstances and rules set forth in the
21 Complaint, and Respondent reasonably relied on the compliance assistance of others, including
22 licensed professional engineers in order to insure compliance, such that Respondent cannot be
23 held responsible for the violations set forth herein.

24 104. As a fourth affirmative defense, Respondent alleges on information and belief the
25 some or all of the claims alleged herein are barred by the applicable statute of limitations,
26 including, without limitations, 28 U.S.C. Section 2462 and related law.

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PRAYER

Paul Oil Company, Inc. prays as follows:

1. The Complaint be denied and that no penalty be imposed;
2. That no relief be provided to Complainant;
3. That this Complaint be dismissed;
4. Respondent requests a hearing, including an oral hearing on the claims raised herein;
5. Respondent requests a settlement conference; and
6. Respondent prays for such other relief as may be just and proper.

Dated: September 13, 2017

CUMMINS & WHITE, LLP



By: _____


Scott R. Carpenter
Attorneys for PAUL OIL COMPANY, INC.

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Answer to Administrative Complaint and Request for Hearing and Settlement was filed with the Regional Hearing Clerk, United States Environmental Protection Agency, Region IX and that a true and correct copy of (1) the Answer to Administrative Complaint and Request for Hearing and Settlement; was sent by United States Certified Mail to:

<p>Xiao Zhang Assistant Regional Counsel Office of the Regional Counsel (ORC-3) U.S. Environmental Protection Agency- Region IX 75 Hawthorne Street San Francisco, CA 94105 (copy and by email)</p> <p>Certified Mail # 7016 2710 0000 5348-2840</p>	
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Dated: September 13, 2017

By: 
Christine G. Anderson