

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

** FILED **
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U.S.EPA - Region 09

REGION IX

IN THE MATTER OF

Paul Oil Company, Inc.

511 S. 2nd Street
Patterson, CA 95363

Respondent.

**ADMINISTRATIVE COMPLAINT AND
OPPORTUNITY TO REQUEST A HEARING**

Proceeding to Assess Class II Civil Penalty Under
Clean Water Act Section 311 for SPCC Violations

Docket No. OPA-09-2016-0003

I. STATUTORY AUTHORITY

1. This Administrative Complaint is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(A) of the Clean Water Act ("Act"), 33 U.S.C. § 1321(b)(6)(A), as amended by the Oil Pollution Act of 1990. The Administrator has delegated this authority to the Regional Administrator of EPA, Region IX, who in turn has delegated it to the Enforcement Division Director of EPA, Region IX ("Complainant") by Regional Delegation 9R-2-14-A (dated February 11, 2013).

2. Pursuant to Section 311(b)(6)(B)(ii) of the Act, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," codified at 40 C.F.R. Part 22 ("CROP"), Complainant hereby provides notice of its proposal to assess a civil penalty against Paul Oil Company, Inc. ("Respondent") for failure to comply with the Spill Prevention, Control, and Countermeasure ("SPCC") regulations

set forth at 40 C.F.R. Part 112 under the authority of Section 311(j) and other provisions of the Clean Water Act, 33 U.S.C., §§ 1251 *et seq.* (“SPCC regulations”), and notice of Respondent's opportunity to file an Answer to this Complaint and to request a hearing.

II. ALLEGATIONS

3. Section 311(j)(1)(C) of the Act, 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 . . . from onshore . . . facilities, and to contain such discharges”

4. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) 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.

5. EPA subsequently promulgated the SPCC regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, which established certain procedures, methods and requirements for each owner and operator of a non-transportation-related onshore facility if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as EPA has determined in 40 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States (“harmful quantity”).

6. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the Act,

33 U.S.C. § 1321(b)(4), EPA has determined that discharges of harmful quantities include oil discharges that cause either (1) a violation of applicable water quality standards, or (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines, or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

7. Paul Oil Company, Inc. is a California corporation with a place of business at 524 North Sierra Avenue in Oakdale, California. As a corporation, Respondent is a “person” within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.

8. Respondent is the owner and operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of the bulk oil storage and distribution facility located at 511 South 2nd Street in Patterson, California (the “Facility”).

9. Drainage from the Facility runs through a storm drain that discharges into the San Joaquin River three miles to the northeast.

10. Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products within the meaning of 40 C.F.R. § 112.1(b) at the Facility.

11. Respondent stores oil in aboveground containers, and containers used for standby storage, seasonal storage, or temporary storage or not otherwise “permanently closed”, within the meaning of 40 C.F.R. §§ 112.1(b)(1) and (3).

12. The Facility has an aggregate above-ground storage capacity greater than 1,320 gallons of oil within the meaning of 40 C.F.R. § 112.1(d)(2)(ii).

13. The Facility is an onshore facility within the meaning of Section 311(a)(10) of the

Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

14. The Facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2, Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

15. The San Joaquin River is a “navigable water[s] of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 112.2. The Facility is therefore a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States (“an SPCC-regulated facility”).

16. Pursuant to the Act, Executive Order 12777 and 40 C.F.R. § 112.1, Respondent, as the owner and operator of an SPCC-regulated facility, is subject to the SPCC regulations.

17. Respondent began operating the Facility in 1985.

COUNT 1: FAILURE TO PREPARE AN SPCC PLAN

18. Paragraphs 3 through 17 above are hereby incorporated by reference.

19. 40 C.F.R. § 112.3 requires the owner or operator of an SPCC-regulated facility to prepare in writing and implement a Spill Prevention Control and Countermeasure Plan (“SPCC plan”) in accordance with 40 C.F.R. § 112.7 and any other applicable section of 40 C.F.R. Part 112. This requirement came into effect on August 16, 2002. 67 Fed. Reg. 47042 (July 17, 2002).

20. 40 C.F.R. § 112.3 provides that a licensed Professional Engineer must review and certify an SPCC plan for it to be effective to satisfy the requirements of 40 C.F.R. Part 112.

21. EPA received information from the Stanislaus County Department of Environmental Services (“County”) that as of the date of the County’s inspection of the Facility on August 13,

2013, Respondent did not have an SPCC plan for the Facility.

22. On November 4, 2014, EPA inspected the Facility and found that Respondent had prepared an SPCC plan for the Facility, dated May 20, 2014 (“Patterson SPCC Plan”), which states that the original date of the plan is “NA”.

23. During the inspection, EPA observed that the Patterson SPCC Plan was not certified by a licensed Professional Engineer and was thus not effective for purposes of 40 C.F.R. Part 112.

24. Respondent’s failure to have an SPCC plan violated 40 C.F.R. § 112.3. This violation commenced on November 4, 2009. EPA has received no information that Respondent has corrected the violation.

**COUNT 2: FAILURE TO PREPARE AN SPCC PLAN THAT HAS PROPER
MANAGEMENT APPROVAL**

25. Paragraphs 3 through 24 above are hereby incorporated by reference.

26. 40 C.F.R. § 112.7 requires that an SPCC plan must have the full approval of management at a level of authority to commit the necessary resources to fully implement the plan.

27. On November 4, 2014, EPA inspected the Facility and found the Patterson SPCC Plan had a signature page for approval by Steve Moreland, the designated Environmental Manager and SPCC Coordinator, but the page was not signed.

28. On January 15, 2015, EPA received evidence from the Facility that the signature page for approval by Steve Moreland was signed on January 1, 2015.

29. Respondent’s failure to have an SPCC plan with full approval of management at the appropriate level of authority violated 40 C.F.R. § 112.7. This violation commenced on May

20, 2014 and ended on January 1, 2015, when the management approval page was signed.

**COUNT 3: FAILURE TO INCLUDE IN THE SPCC PLAN THE TYPE OF OIL STORED
IN MOBILE OR PORTABLE CONTAINERS**

30. Paragraphs 3 through 29 above are hereby incorporated by reference.

31. 40 C.F.R. § 112.7(a)(3)(i) requires the owner or operator of an SPCC-regulated facility to address in the SPCC plan the type of oil in each fixed container and its storage capacity. For mobile or portable containers, the plan must 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.

32. On November 4, 2014, EPA inspected the Facility and found many 55-gallon drums stacked in the warehouse, along with several larger mobile or portable storage tanks.

33. During the inspection, EPA found that the Patterson SPCC Plan did not identify the type of oil stored in the 55-gallon drums stacked in the warehouse, or an estimate of the potential number of mobile or portable containers, the types of oil, and anticipated storage capacities.

34. During the inspection, EPA found that the Patterson SPCC Plan did not provide the type or oil and storage capacity of the large mobile or portable storage containers in the warehouse, or an estimate of the potential number of the containers, the types of oil, and anticipated storage capacities.

35. Respondent's failure to include in the SPCC plan the type of oil stored in the 55-gallon drums and the type of oil and storage capacity of the larger mobile or portable containers violated 40 C.F.R. § 112.7(a)(3)(i). This violation commenced on May 20, 2014. EPA has received no information that Respondent has corrected the violation.

COUNT 4: FAILURE TO INCLUDE IN THE SPCC PLAN INFORMATION ON OIL DISCHARGES FROM FAILURE OF MAJOR EQUIPMENT

36. Paragraphs 3 through 35 above are hereby incorporated by reference.

37. 40 C.F.R. § 112.7(b) requires that where experience indicates a reasonable potential for equipment failure (such as loading or unloading equipment, tank overflow, rupture, or leakage, or any other equipment known to be a source of discharge), the owner or operator of an SPCC-regulated facility must include in the SPCC plan a prediction of the direction, rate of flow, and total quantity of oil that could be discharged as a result of each type of major equipment failure.

38. EPA has observed that single-wall above-ground bulk storage tanks for oil have a reasonable potential for equipment failure.

39. During EPA's inspection of the Facility on November 4, 2014, EPA observed that one of the five 12,000-gallon single-wall above-ground bulk storage tanks, and the above-ground piping for the above-ground bulk storage tanks, were leaking.

40. During the inspection, EPA found that the Patterson SPCC Plan did not include a prediction of the rate of flow of oil that may be discharged as a result of failure of any equipment, including the other four 12,000-gallon single-wall above-storage bulk storage tanks and the above-ground piping for the tanks.

41. Respondent's failure to have an SPCC plan that contains the rate of flow of oil resulting from each type of major equipment failure violated 40 C.F.R. § 112.7(b). This violation commenced on May 20, 2014. EPA has received no information that Respondent has corrected the violation.

COUNT 5: FAILURE TO PROVIDE APPROPRIATE CONTAINMENT AND/OR DIVERSIONARY STRUCTURES OR EQUIPMENT TO PREVENT A DISCHARGE

42. Paragraphs 3 through 41 above are hereby incorporated by reference.

43. 40 C.F.R. § 112.7(c) requires the owner or operator of an SPCC-regulated facility to provide appropriate containment and/or diversionary structures or equipment to prevent a discharge in a harmful quantity. 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. The method, design, and capacity of the secondary containment need only address the typical failure mode and the most likely quantity of oil that would be discharged.

44. The Patterson SPCC Plan contains proposed facility upgrades to provide adequate containment and/or diversionary structures or equipment for the truck loading area, the above-ground storage tank area and the warehouse.

45. At the time of EPA's inspection on November 4, 2014, the proposed facility upgrades in the Patterson SPCC Plan for the truck loading area, the above-ground storage tank area and the warehouse had not been constructed.

46. During EPA's inspection, EPA observed that the truck-loading area had no containment system to contain oil.

47. During EPA's inspection, EPA observed that the containment system for the above-ground storage tank area with five 12,000-gallon tanks consisted of concrete curbing less than one foot tall around the base of the tanks.

48. During EPA's inspection, EPA observed that the containment system for the warehouse was a partially-installed half-inch berm at the entrances to the warehouse.

49. During EPA's inspection, EPA observed that the Patterson SPCC Plan provides that spill control equipment at the Facility includes, at a minimum, fifty bags of granular absorbent.

50. During EPA's inspection, EPA observed that the Facility only had seven bags of granular absorbent on site.

51. Respondent provided photographic evidence on January 14, 2015 demonstrating that it had come into compliance with 40 C.F.R. § 112.7(c) at the warehouse by completing the installation of a half-inch berm at each entrance to the warehouse.

52. Respondent's failure to provide the appropriate containment and/or diversionary structures to prevent a discharge for the truck loading area, above-ground storage tank area and the warehouse violated 40 C.F.R. § 112.7(c). These violations commenced on November 4, 2014. The violation for failure to provide appropriate containment for the warehouse continued until January 14, 2015. EPA has received no information that Respondent has corrected the remaining violations of 40 C.F.R. § 112.7(c).

COUNT 6: FAILURE TO CONDUCT INSPECTIONS AND TESTS AND KEEP APPROPRIATE RECORDS

53. Paragraphs 3 through 52 above are hereby incorporated by reference.

54. 40 C.F.R. § 112.7(e) requires the owner or operator of an SPCC-regulated facility to conduct inspections and tests as required by 40 C.F.R. Part 112 in accordance with written procedures developed for the facility. The written procedures and a record of the inspections and tests must be signed by the appropriate supervisor or inspector and be kept with the SPCC plan for a period of three years. Records of inspections and tests kept under usual and customary business practices suffice for purposes of 40 C.F.R. § 112.7(e).

55. On November 4, 2014, EPA inspected the Facility and found that the Patterson

SPCC Plan contains written procedures for conducting inspections and tests.

56. The written procedures in the Patterson SPCC Plan provide that formal inspections are performed monthly and recorded using the inspection checklist and the inspection checklists must be stored onsite for a minimum of three years.

57. During the inspection, EPA found that the Facility had not kept any inspection checklists from monthly formal inspections, or any records of inspections and tests kept under usual or customary business practices.

58. Respondent's failure to conduct monthly inspections in accordance with written procedures and keep records of inspections for a minimum of three years violated 40 C.F.R. § 112.7(e). This violation commenced on November 4, 2011. EPA has received no information that Respondent has corrected the violation.

COUNT 7: FAILURE TO CONDUCT DISCHARGE PREVENTION TRAINING

59. Paragraphs 3 through 58 above are hereby incorporated by reference.

60. 40 C.F.R. § 112.7(f) requires the owner or operator of an SPCC-regulated facility to: (1) at a minimum, train 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; (2) designate a person accountable for discharge prevention and who reports to facility management; and (3) schedule and conduct discharge prevention briefings at least once a year, which must highlight and describe known discharges or failures, malfunctioning components, and any recently developed precautionary measures.

61. On November 4, 2014, EPA inspected the Facility and found that the Patterson

SPCC Plan contains a training protocol, which provides that: (1) all new oil-handling personnel will receive hazardous material handling and spill prevention training, (2) the Facility will conduct annual trainings for employees, (3) the trainings will cover a list of topics, and (4) records of attendance at the trainings and topics covered by the trainings shall be maintained by the SPCC Coordinator at least three years.

62. During EPA's November 4, 2014 inspection, Respondent was unable to provide any records of trainings for new employees or records of annual trainings.

63. Respondent's failure to conduct discharge prevention training for oil-handling personnel and annual briefings violated 40 C.F.R. § 112.7(f). This violation commenced on November 4, 2011. EPA has received no information that Respondent has corrected the violation.

COUNT 8: FAILURE TO PROVIDE PROFESSIONAL ENGINEER CERTIFICATION OF THE SPCC PLAN

64. Paragraphs 3 through 63 above are hereby incorporated by reference.

65. 40 C.F.R. § 112.3(d) requires that a licensed Professional Engineer ("PE") must review and certify an SPCC plan for it to be effective to satisfy the requirements of 40 C.F.R. Part 112. By certifying an SPCC plan, the PE attests that: he is familiar with the requirements of 40 C.F.R. Part 112, he or his agent has visited and examined the facility, the SPCC plan was prepared in accordance with good engineering practice and with the requirements of 40 C.F.R. Part 112, the procedures for required inspections and testing have been established, and the SPCC plan is adequate for the facility.

66. On November 4, 2014, EPA inspected the Facility and found that the Patterson SPCC Plan states that the PE will provide the required certification once the Facility has

completed a list of upgrades described in the Patterson SPCC Plan to comply with SPCC requirements.

67. At the time of EPA's November 4, 2014 inspection, the list of upgrades in the Patterson SPCC Plan had not been completed and the PE had not certified the Patterson SPCC Plan.

68. Respondent's failure to have a PE certify the Patterson SPCC Plan violated 40 C.F.R. § 112.3(d). This violation commenced on May 20, 2014. EPA has received no information that Respondent has corrected the violation.

COUNT 9: FAILURE TO HAVE A SYSTEM TO RESTRAIN DRAINAGE FROM DIKED AREAS

69. Paragraphs 3 through 68 above are hereby incorporated by reference.

70. 40 C.F.R. § 112.8(a) requires the owner or operator of an onshore SPCC-regulated facility to meet the discharge prevention and containment requirements listed in 40 C.F.R. § 112.8.

71. 40 C.F.R. § 112.8(b)(1) requires the owner or operator of an onshore SPCC-regulated facility to restrict drainage from diked storage areas by valves to prevent a discharge into the drainage system or facility effluent drainage system, except where facility systems are designed to control such discharge. Diked areas may be emptied by pumps or ejectors, which must be manually activated, and the condition of the accumulation must be inspected before pumping or ejecting to ensure that no oil will be discharged.

72. On November 4, 2014, EPA inspected the Facility and found that diked area around the five above-ground bulk storage tanks had no valve to restrict drainage.

73. During the inspection, EPA found that the diked area around the five above-ground

bulk storage tanks was inadequately sized and thus was not designed to control a discharge into the drainage system.

74. The Patterson SPCC Plan describes a proposed containment system for the five tanks, which is a double containment area sized to contain the largest tank plus precipitation.

75. At the time of EPA's inspection, the proposed double containment area for the five tanks was not yet constructed.

76. Respondent's failure to equip diked areas with valves or other suitable drainage system to restrict discharges violated 40 C.F.R. § 112.8(b)(1). This violation commenced on November 4, 2014. EPA has received no information that Respondent has corrected the violation.

COUNT 10: FAILURE TO EQUIP UNDIKED AREAS WITH A DIVERSION SYSTEM TO RETAIN OIL DISCHARGES IN THE FACILITY

77. Paragraphs 3 through 76 above are hereby incorporated by reference.

78. 40 C.F.R. § 112.8(b)(3) requires the owner or operator of an onshore SPCC-regulated facility to design facility drainage systems from undiked areas with a potential for a discharge to flow into ponds, lagoons, or catchment basins designed to retain oil or return it to the facility.

79. 40 C.F.R. § 112.8(b)(4) requires that if facility drainage is not engineered as in 40 C.F.R. § 112.8(b)(3), the final discharge of all ditches inside the facility must be equipped with a diversion system that would, in the event of an uncontrolled discharge, retain oil in the facility.

80. At the time of EPA's November 4, 2014 inspection, undiked areas with potential for discharge, including the truck loading area and the warehouse, were not equipped with a drainage system designed to flow into a pond, lagoon, or catchment basin designed to retain oil and return

it to the Facility.

81. At the time of EPA's inspection, the truck loading area and the warehouse were not equipped with a diversion system and an uncontrolled discharge of oil would not be retained and returned to the Facility.

82. During EPA's inspection, EPA observed that in the event of an uncontrolled discharge, oil from the truck loading area and the warehouse would flow into drain inlets that discharge into the San Joaquin River.

83. The Facility provided photographic evidence on January 14, 2015 demonstrating that it had come into compliance with 40 C.F.R. § 112.8(b)(3) at the warehouse by installing a half-inch berm at each entry to the warehouse.

84. Respondent's failure to equip the truck loading area and the warehouse with an appropriate diversion system to retain uncontrolled discharges of oil in the Facility violated the requirements of 40 C.F.R. § 112.8(b)(4). This violation commenced on November 4, 2014. This violation at the warehouse ended on January 14, 2015. EPA has received no information that Respondent has corrected the violation at the truck-loading area.

COUNT 11: FAILURE TO USE CONTAINERS FOR STORAGE OF OIL THAT ARE COMPATIBLE WITH THE MATERIAL STORED

85. Paragraphs 3 through 84 above are hereby incorporated by reference.

86. 40 C.F.R. § 112.8(c)(1) requires the owner or operator of an onshore SPCC-regulated facility to not use a container for the storage of oil unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature.

87. During EPA's November 4, 2014 inspection at the Facility, five 12,000-gallon bulk

storage tanks positioned along the perimeter of the property were observed to have severe rust.

88. The five bulk storage tanks were not observed to be compatible with oil storage because of the severe rust.

89. At the time of EPA's inspection, Respondent could not provide any documentation or appropriate signage demonstrating that the tanks were properly permanently closed within the meaning of 40 C.F.R. §§ 112.1(b)(3) and 112.2.

90. Respondent's failure to not use a container for the storage of oil unless its material and construction are compatible with the material stored and conditions of storage violated the requirements of 40 C.F.R. § 112.8(c)(1). This violation commenced on November 4, 2014. EPA has received no information that Respondent has corrected the violation.

COUNT 12: FAILURE TO CONSTRUCT SUFFICIENTLY-SIZED SECONDARY CONTAINMENT FOR BULK STORAGE TANKS

91. Paragraphs 3 through 90 above are hereby incorporated by reference.

92. 40 C.F.R. § 112.8(c)(2) requires the owner or operator of an onshore SPCC-regulated facility to construct all bulk storage tanks installations (except mobile refuelers and other non-transportation-related tank trucks) to have a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation, and the diked areas must be sufficiently impervious to contain discharged oil. An alternative system of a drainage trench enclosure may be used if it is arranged so that any discharge will terminate and be safely confined in a facility catchment basin or holding pond.

93. During the November 4, 2014 inspection at the Facility, the five 12,000-gallon bulk storage containers had improperly sized secondary containment consisting of concrete curbing less than one foot tall surrounding the base of the tanks, which is inadequate to contain the

capacity of the largest single tank.

94. During the inspection, EPA observed that the five tanks rested on gravel, which is not sufficiently impervious to contain discharged oil.

95. EPA did not observe an alternative system of a drainage trench enclosure for the five tanks.

96. Respondent's failure to provide secondary containment for the capacity of the single largest container plus precipitation and a diked area that is sufficiently impervious to contain discharged oil violated the requirements of 40 C.F.R. § 112.8(c)(2). This violation commenced on November 4, 2014. EPA has received no information that Respondent has corrected the violation.

**COUNT 13: FAILURE TO PROMPTLY CORRECT VISIBLE DISCHARGES OF OIL
AND REMOVE ACCUMULATIONS OF OIL**

97. Paragraphs 3 through 96 above are hereby incorporated by reference.

98. 40 C.F.R. § 112.8(c)(10) requires the owner or operator of an onshore SPCC-regulated facility to promptly correct visible discharges which result in a loss of oil from the container, including but not limited to seams, gaskets, piping, pumps, valves, rivets, and bolts, and promptly remove any accumulations of oil in diked areas.

99. During the November 4, 2014 inspection at the Facility, visible discharges of oil were observed around Aboveground Storage Tank No. 5 and the conjoined aboveground piping.

100. During the inspection, EPA observed that oil from Aboveground Storage Tank No. 5 leaked from the base of the tank onto the concrete pad on which the tank sat and flowed off the pad onto gravel.

101. During the inspection, EPA observed that Aboveground Storage Tank No. 5 also

leaked where a pipe connects near the base of the tank, and the leaked oil stained the concrete pad and gravel beneath this area.

102. During the inspection, EPA observed that the oil discharges from Aboveground Storage Tank No. 5 on the concrete pad and on the gravel appeared to have been in place for some time and not recently discharged.

103. During the inspection, EPA did not observe that any corrections to the leaks from Aboveground Storage Tank No. 5 had been made.

104. During the inspection, EPA observed that oil stains on the ground throughout the conjoined above-ground piping and related appurtenances that connect the five bulk storage tanks to the Facility's loading and unloading area.

105. The oil stains on the ground in the above-ground piping area appeared to have been in place for some time and not recently discharged.

106. During the inspection, EPA did not observe that any corrections to the leaks from the above-ground piping area had been made.

107. Respondent's failure to promptly correct visible discharges and promptly remove any accumulations of oil in diked areas violated 40 C.F.R. § 112.8(c)(10) at the Facility. This violation commenced on November 4, 2014. EPA has received no information that Respondent has corrected the violation.

COUNT 14: FAILURE TO POSITION OR LOCATE MOBILE OR PORTABLE CONTAINERS TO PREVENT A DISCHARGE AND PROVIDE ADEQUATE SECONDARY CONTAINMENT

108. Paragraphs 3 through 107 above are hereby incorporated by reference.

109. 40 C.F.R. § 112.8(c)(11) requires the owner or operator of an onshore SPCC-

regulated facility to position or locate mobile or portable oil storage containers to prevent a discharge in a harmful quantity. Except for mobile refuelers and other non-transportation-related tank trucks, a secondary means of containment sufficient to contain the capacity of the single largest compartment or container with sufficient freeboard for precipitation must be provided.

110. At the time of EPA's inspection on November 4, 2014, the mobile or portable containers were stored inside the warehouse on the southwest section of the Facility.

111. During the inspection, the half-inch berm at the entrances to the warehouse was partially installed and could not serve as secondary containment.

112. The Facility provided photographic evidence on January 14, 2015 demonstrating that it had come into compliance with 40 C.F.R. § 112.8(c)(11) by completing the installation of the half-inch berm.

113. Respondent's failure to provide secondary containment for mobile or portable containers violated 40 C.F.R. § 112.8(c)(11). This violation commenced on November 4, 2014 and continued until January 14, 2015.

III. PROPOSED PENALTY

114. Complainant realleges and incorporates by reference the allegations in Paragraphs 3 through 113 above.

115. Based on the allegations above, Respondent is liable for at least 14 separate violations of 40 C.F.R. Part 112. Pursuant to Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), as adjusted for inflation by 40 C.F.R. § 19.4 (Table 1), Complainant proposes that the Administrator issue a Final Order assessing administrative penalties against the

Respondent in an amount not to exceed \$16,000 per day for each day during which each violation continues (in other words, per day per violation), up to a maximum of \$187,500. Each of the 14 violations alleged represents a significant violation of the Act because each violation has a significant impact on Respondent's ability to prevent or respond to worst case oil discharges. Under Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), the factors to be taken into consideration in determining the amount of the penalty include: the seriousness of the violation or violations; the economic benefit to the respondent, if any, resulting from the violation; 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 the Respondent's efforts to minimize or mitigate the effects of the discharge; the economic effect of the penalty on the Respondent; and any other matters as justice may require.

116. In assessing a civil penalty against Respondent, Complainant further requests that consideration be given to the applicable criteria set forth in the Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act (August 1998).

IV. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

117. The rules of procedure governing this civil administrative litigation are set forth in the CROP. A copy of the CROP accompanies this Complaint. Where Respondent intends to contest any material fact on which the Complaint is based, contend that the proposed penalty is inappropriate or contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region IX, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of

EPA, Region IX, is:

Steven Armsey
Regional Hearing Clerk (ORC-1)
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105

All documents filed in this action must be filed with the Regional Hearing Clerk at the same address.

118. Respondent also shall serve one copy of any document Respondent files in this matter, including the Answer to the Complaint, on Complainant by sending such documents to:

Xiao Zhang
Assistant Regional Counsel
Office of Regional Counsel (ORC-3)
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, California 94105
(415) 972-3266

119. Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent has no knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. The Answer also shall set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense; (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding); (3) the basis for opposing the proposed relief; and (4) whether Respondent requests a hearing.

120. If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. If

Respondent fails to file a timely Answer to the Complaint, Respondent may be found in default after a motion by Complainant. Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefor shall be issued pursuant to 40 C.F.R. § 22.17(c).

VI. OPPORTUNITY TO REQUEST HEARING

121. Respondent may, pursuant to Section 311(b)(6) of the Act and 40 C.F.R. § 22.15(c), request a hearing on any material fact alleged in this Complaint or on the proposed penalty assessment, in its Answer to this Complaint. Even if Respondent does not explicitly request a hearing in its Answer, the Presiding Officer may hold such a hearing if an Answer raises issues appropriate for adjudication. The procedures for any such hearing and for all proceedings in this action are set out in the CROP.

122. Following receipt of an Answer, a Presiding Officer will be assigned. The Presiding Officer will notify the parties of his assignment, and shall notify the parties of the time and place of further proceedings in the case. Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-559, and the procedures set forth in Subpart D of the CROP.

SETTLEMENT

123. Respondent may settle this matter without hearing by following the procedures provided in 40 C.F.R. § 22.18(b)(2). Respondent also may request an informal conference with

the Complainant concerning the alleged violations and the amount of the proposed penalty. A request for an informal conference does not extend any deadline in this proceeding, including the deadline by which Respondent must submit an Answer to this Complaint. To request an informal conference, please contact Connor Adams at:

U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street (ENF-3-2)
San Francisco, California 94105
(415) 947-4109

VII. GENERAL PROVISIONS

124. Respondent has a right to be represented by an attorney at any stage of these proceedings.

125. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act or regulations promulgated thereunder.

126. Neither assessment nor payment of an administrative civil penalty pursuant to Section 311(b)(6) of the Act will affect Respondent's continuing obligation to comply with the Act, and with any regulations promulgated, or orders issued, pursuant thereto.

ISSUED THIS 7th DAY OF April, 2016.



Kathleen H. Johnson, Director
Enforcement Division
U.S. Environmental Protection Agency, Region IX

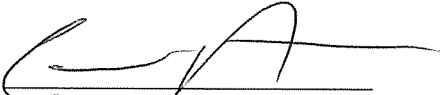
CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Complaint and Notice of Opportunity for Hearing was filed with the Regional Hearing Clerk, United States Environmental Protection Agency, Region IX, and that a true and correct copy of (1) the Complaint and Notice of Opportunity for Hearing; (2) the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, codified at 40 C.F.R. Part 22; and (3) the Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act (August 1998) were sent by United States Certified Mail, Return Receipt Requested, to:

Mark A. Paul
President
Paul Oil, Inc.
524 N. Sierra Ave.
Oakdale, CA 95361

Certified Mail # 7012 1640 0001 2190 5874

Date: 4/7/2016

By: 
Connor Adams
Enforcement Division
U.S. Environmental Protection Agency,
Region IX