BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: TYREE OIL, INC. 2429 North Borthwick Avenue Portland, Oregon 97227 Respondent.	DOCKET NO. CWA-10-2024-0100 **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. CWA Section 311(b)(6)(A), 33 U.S.C. § 1321(b)(6)(A), authorizes EPA 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 EPA to assess 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. § 19.4, the assessed Class II civil penalties may not exceed $23,048 per day for each day during which the violation continues, up to a maximum penalty of $288,080.[1]

1.4. Pursuant to CWA Section 311(b)(6)(A) and (b)(6)(B), 33 U.S.C. § 1321(b)(6)(A) and

[1] *See also* 88 Fed. Reg. 247 (December 27, 2023) (2024 Civil Monetary Penalty Inflation Adjustment Rule).

(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 Tyree Oil, 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 CWA's objective 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 oil discharges. 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 his Section 311(j)(1)(C) authority to EPA 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 311(j), the EPA promulgated the Oil Pollution Prevention regulations in 40 C.F.R. Part 112. These regulations set forth procedures, methods, 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. These regulations require facilities to prepare and implement a Spill Prevention Control and Countermeasure (SPCC) Plan.

3.5. 40 C.F.R. Part 112 applies 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 "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.

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

3.8. The regulations define "person" to include any individual, firm, corporation, association,

or partnership. 40 C.F.R. § 112.2.

3.9. "Non-transportation-related," as applied to an onshore facility is defined to include "Loading racks, transfer hoses, loading arms and other equipment which are appurtenant to a non-transportation-related facility or terminal facility and which are used to transfer oil in bulk to or from highway vehicles or railroad cars." 40 C.F.R § 112 App. A. (1)(I).

3.10. 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.

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

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.

General Allegations

3.13. Respondent is a corporation, and a "person" under CWA Sections 311(a)(7) and 502(5), 33 U.S.C. §§ 1321(a)(7), 1362(5).

3.14. At all times relevant to this Consent Agreement, Respondent was the "owner or operator," within the meaning of 40 C.F.R. § 112.2 and Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), of the facility located at 2429 North Borthwick Avenue, Portland, Oregon (Facility). Respondent closed the Facility in December 2023.

3.15. The Facility property was bounded on the north side by North Russell Street, on the west side by North Albina Avenue, on the east side by North Borthwick Avenue, and

on the south side by an asphalt parking lot.

3.16. The Facility received and transferred bulk petroleum products by tanker truck and small quantities of lubricants by delivery truck. Drum and tote storage occurred in the warehouse and bulk fuel, oil, and lubricant tanks (with capacities of 1,000 – 12,000 gallons) were in one of the four Facility aboveground storage tank concrete secondary containment areas.

3.17. The Facility included a commercial cardlock fueling area in its northwest corner. One truck loading/unloading rack was located along the south Facility boundary near the south tank farm, while a second truck loading/unloading rack was located north of the office/warehouse building east of tank farm number one.

3.18. The Facility was subject to the Revision 2, October 18, 2021, SPCC Plan (Plan).

3.19. The EPA inspected the Facility on October 21, 2021 (2021 Inspection) as part of a routine Region 10 oil team SPCC inspection tour of several SPCC-regulated facilities located in the Portland metropolitan area.

3.20. During the 2021 Inspection, Respondent indicated the largest tanker truck compartments loaded/unloaded at the north and south racks were 3,200-gallons and 1,200-gallons, respectively.

3.21. Facility gradient was level with slight grade slopes directing surface runoff to several catch basins located across the Facility. The Facility catch basins were connected to three subsurface sewer piping systems, each equipped with an oil/water separator that discharged to one of two discharge outfalls adjacent to the Facility west boundary. Facility sewer lines were connected to the City of Portland storm water system which ultimately discharged to the Columbia River approximately 5.3 miles northwest of the Facility.

3.22. Respondent reviewed and updated its SPCC Plan on June 1, 2022 (Revised Plan) to address the comments made by EPA during the 2021 Inspection.

3.23. EPA reviewed the Revised Plan in June 2022.

Specific Violations

Count 1 - Violations of 40 C.F.R. § 110.4

3.24. 40 C.F.R. § 110.4 prohibits addition of dispersants or emulsifiers to oil to be discharged that would circumvent the provisions of 40 C.F.R. § 110, Discharge of Oil.

3.24.1. During the 2021 Inspection, Respondent indicated that it routinely adds Oil Eater to accumulated containment water as treatment. Oil Eater would disperse or emulsify oil in Respondent's containment water, allowing it to bypass the oil/water separator and circumvent 40 C.F.R. § 110 provisions, thereby violating 40 C.F.R. § 110.4.

Count 2 – Violations of 40 C.F.R. § 112.3(d)

3.25. 40 C.F.R. § 112.3(d) requires the Professional Engineer that reviews and certifies a facility's SPCC Plan to attest, among other things, that:

(i) He is familiar with the requirements of this part;
(ii) He or his agent has visited and examined the facility;
(iii) The Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards, and with the requirements of this part;
(iv) Procedures for required inspections and testing have been established; and
(v) The Plan is adequate for the facility.

3.25.1. The Plan and the Revised Plan do not comply with 40 C.F.R. § 112.3(d) because the Professional Engineers' signed certifications do not include the required

attestations.

Count 3 – Violations of 40 C.F.R. §§ 112.7(a) and 112.7(d)

3.26. 40 C.F.R. § 112.7(a) requires, among other things, that Respondent "must … (a)(2) Comply with all applicable requirements listed in this part" including the secondary containment requirements in 40 C.F.R. § 112.7(h)(1).

3.27. While there are certain exceptions available if Respondent provides "equivalent environmental protection by some other means of spill prevention," Respondent may not deviate from the "secondary containment requirements in paragraph (c) and (h)(1) of this section."

3.27.1. The Plan and Revised Plan do not comply with 40 C.F.R. §§ 112.7(a)(2) and 112.7(d) because they do not include any § 112.7(d) deviation or impracticability evaluation, determinations, or demonstrations, or the contingency plan required by 40 C.F.R. § 109, even though the Facility did not have the required sized secondary containment for the north and south loading racks.

3.27.2. The Revised Plan does not comply with 40 C.F.R. §§ 112.7(a)(2) and 112.7(d) because the Revised Plan deviates without explanation from the industry standard record-keeping requirements by only requiring formal tank integrity testing records to be retained for at least five years, instead of the industry standards' typical retention time of the life of the tank.

3.28. 40 C.F.R. § 112.7(a) also requires, among other things, that Respondent must …(a)(3) describe in its Plan the physical layout of the facility and include a facility diagram, which must mark the location and contents of each fixed oil storage container and the storage area where mobile or portable containers are located. The facility diagram must identify the location of and mark as "exempt" underground tanks that are otherwise

exempted from the requirements of this part under § 112.1(d)(4). The facility diagram must also include all transfer stations and connecting pipes, including intra-facility gathering lines that are otherwise exempted from the requirements of this part under § 112.1(d)(11).

3.28.1. The Plan does not comply with 40 C.F.R. § 112.7(a)(3) because the Facility diagram is not consistent with the Plan's Facility layout. Specifically, the Facility diagram indicates that underground piping from the northeast stormwater catch basin at the cardlock dispensers enters the oil/water separator on the separator's north side. The underground piping actually enters the oil/water separator on the separator's east side.

3.29. Under 40 C.F.R. § 112.7(a)(3), Respondent must also address in its Plan: …

(ii) Discharge prevention measures including procedure for routine handling of products …

(iii) Discharge or drainage controls such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge …

(v) Methods of disposal of recovered materials in accordance with applicable legal requirements …

3.29.1. The Plan and Revised Plan do not comply with 40 C.F.R. § 112.7(a)(3) because they do not discuss or identify discharge prevention measures for the buried connecting pipes from the aboveground storage tanks to the cardlock fuel dispensers as is required by 40 C.F.R. § 112.7(a)(3)(ii) and do not discuss or identify discharge or drainage controls for the buried connecting pipes from the aboveground storage tanks to the cardlock fuel dispensers as is required by 40 C.F.R. § 112.7(a)(3)(iii).

3.29.2. The Plan states at page 18 that "for accumulated storm water in site oil/water separator reservoirs, the water is observed for sheen prior to discharging to the city sewer system." However, Respondent indicated that there are no valves on

one of the three separators and the valves on the other two separators would be closed only in the event of a spill. Consequently, Respondent is making no sheen observations of water in the separators and therefore there is no discharge or drainage control for the oil/water separator system as required by 40 C.F.R. §112.7(a)(3)(iii).

3.29.3. The Plan implies incorrectly at Part 6.6 that the three oil/water separators' 550/1,200-gallon capacities are oil retention capacities; the Plan's references to the separators do not accurately represent the operational design oil retention capacities of the separators apparently installed at the Facility. Consequently, Respondent has not addressed discharge or drainage controls such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge as required by 40 C.F.R. § 112.7(a)(3)(iii).

3.29.4. The Plan lacks details on the methods and means of disposal of recovered materials as required by 40 C.F.R. § 112.7(a)(3)(v). The Revised Plan does not specify methods of disposal of recovered materials from buried pipes.

3.29.5. The Revised Plan does not identify the specific method that Respondent will use to identify a buried pipe leak and under 40 C.F.R. § 112.7(a)(3)(iii), the tank owner or operator and its professional engineer must sufficiently describe the methods used so that an inspector can assess their efficacy.

Count 4 – Violation of 40 C.F.R. § 112.7(b)

3.30. 40 C.F.R. § 112.7 requires, among other things, that Respondent "must … (b) Where experience indicates a reasonable potential for equipment failure … include in its 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."

3.30.1. The Plan and Revised Plan do not comply with 40 C.F.R. § 112.7(b) because they lack a spill prediction evaluation for the buried connecting pipes from the aboveground storage tanks to the cardlock dispensers.

Count 5 – Violations of 40 C.F.R. § 112.7(c): General Secondary Containment

3.31. 40 C.F.R. § 112.7 requires, among other things, that Respondent "must … (c) Provide appropriate 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…"

3.31.1. The Plan does not comply with 40 C.F.R. § 112.7(c) because implies incorrectly at Part 6.6 that the three oil/water separators' 550/1,200-gallon capacities are oil retention capacities; the Plan's references to the separators do not accurately represent the operational design oil retention capacities of the separators apparently installed at the Facility and therefore the separators cannot contain sufficient oil so that any discharge from a primary containment system will not escape the containment system before a cleanup occurs.

3.32. The Plan indicates that the Facility's sewer lines are equipped with an oil/water separator capable of processing 200-gallons per minute; however, the models used at the Facility have either 100- or 50-gallons per minute flow rates. The Plan does not describe what rain flow contributions occur from Facility office and warehouse roofs to the separator watersheds that could affect average peak flow rate estimates. Consequently, Respondent has not demonstrated that the system is constructed so that any discharge from a primary containment system will not

escape the containment system before a cleanup occurs.

3.33. The Plan identifies and describes neither a detection method for discharges from buried connecting pipes from the above ground storage tanks to the cardlock dispensers, nor a typical failure mode, nor a most likely quantity of oil that would discharge if a buried connecting pipe failed, nor identifies preventative systems for buried connecting pipe failures and releases. Consequently, Respondent has not demonstrated that the system is constructed so that any discharge from a primary containment system will not escape the containment system before a cleanup occurs.

3.33.1. The Plan indicates that Respondent observes contained water for sheen and removes any sheen with sorbent materials. During inspection, Respondent indicated that it routinely adds Oil Eater to contained water as a treatment regardless of whether sheen is present or not. Oil Eater would disperse or emulsify oil in Respondent's containment water, allow it to bypass the oil/water separator, and circumvent the primary containment system, allowing it to escape the containment system before a cleanup occurs.

3.33.2. The Revised Plan indicates oil storage containers are in the warehouses, and asserts that the warehouses' walls provide secondary containment, but does not state that such containment or diversion is sufficient to contain spilled oil until a cleanup occurs.

3.33.3. Under the Revised Plan the Facility lacks adequate secondary containment to contain a lube oil tank farm area spill until a cleanup occurs.

3.33.4. The Revised Plan fails to address stormwater accumulations and associated runoff flows associated with approximately 0.42-0.5 acres of Facility site property, and therefore does not provide appropriate containment or diversionary structures to

prevent a discharge.

3.33.5. The Revised Plan does not discuss specific corrective actions or schedules for such actions to correct the lack of secondary containment for buried pipes or the Lube Oil Tank Farm.

Count 7 – Violations of 40 C.F.R. § 112.7(e)

3.34. 40 C.F.R. § 112.7 requires, among other things, that Respondent "must … (e) … Conduct inspections and tests required by this part in accordance with written procedures that it or the certifying engineer develop for the facility. It 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. Records of inspections and tests kept under usual and customary business practices will suffice for purposes of this paragraph."

3.34.1. The Plan does not comply with 40 C.F.R. § 112.7(e) because it does not include written procedures for annual leak testing on the buried connecting piping from the aboveground storage tanks to the cardlock dispensers or for the inspection and testing requirements for buried piping.

3.34.2. Respondent produced no inspection records signed by its §112.7 inspector during the inspection to demonstrate that each of the three oil/water separators were being inspected monthly to determine and record the thickness of floating oil/sludge per the 2-inch removal trigger in the Plan, Part 9.1, p. 28.

3.34.3. The Revised Plan does not comply with 40 C.F.R. § 112.7(e) because it fails to provide for creating inspection records signed by a supervisor or inspector for, among other things, tank entries for leaks, shell distortions, or settlement, foundation conditions, insulation, piping, valves,

containment structures, supports, monthly oil-water separator inspections, or aboveground mobile and portable oil storage container integrity.

Count 8 – Violation of 40 C.F.R. § 112.7(f)

3.35. 40 C.F.R. § 112.7 requires, among other things, that Respondent "must … (f)(2) Designate a person at each applicable facility who is accountable for discharge prevention and who reports to facility management."

3.35.1. The Plan does not comply with 40 C.F.R. § 112.7(f)(2) because the designation in the Plan does not match the designated personnel identified during the 2021 Inspection.

Count 9 – Violation of 40 C.F.R. § 112.7(h)

3.36. 40 C.F.R. § 112.7 requires, among other things, that Respondent "must …(h)(1) Where loading/unloading rack drainage does not flow into a catchment basin or treatment facility designed to handle discharges, use a quick drainage system for tank car or tank truck loading/unloading racks. It must design any containment system to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the facility."

3.37. 40 C.F.R. § 112.7 allows that (d) Provided Respondent's "Plan is certified by a licensed Professional Engineer … if it determines that the installation of any of the structures or pieces of equipment listed in paragraph() … (h)(1) of this section … to prevent a discharge as described in § 112.1(b) from any onshore or offshore facility is not practicable, it must clearly explain in its Plan why such measures are not practicable."

3.37.1. Respondent indicated the largest tanker truck compartment loaded/unloaded at the north and south rack locations were 3,200-gallons

and 1,200-gallons, respectively. The Plan does not comply with 40 C.F.R. § 112.7(h)(1) because it indicates the Facility does not have a secondary containment system that would hold the maximum capacity of these single largest tanker compartments at their respective rack locations. The Plan did not demonstrate impracticability for the lack of Facility structures meeting this sized secondary containment requirement under 112.7(d).

3.37.2. The Revised Plan does not demonstrate that Respondent has installed adequately sized secondary containment to remedy the lack of sized secondary containment at the truck loading racks or discuss installing sized secondary containment for the north and south truck loading racks, or, if applicable, how Respondent would close the racks, which were capable of being operated prior to closure of the Facility.

Count 10 – Violation of 40 C.F.R. § 112.7(i)

3.38. 40 C.F.R. § 112.7 requires, among other things, that "(i) if a field-constructed aboveground container undergoes a repair, alteration, reconstruction, or a change in service that might affect the risk of a discharge or failure due to brittle fracture or other catastrophe, or has discharged oil or failed due to brittle fracture failure or other catastrophe," Respondent must "evaluate the container for risk of discharge or failure due to brittle fracture or other catastrophe, and as necessary, take appropriate action."

3.38.1. The Plan does not comply with 40 C.F.R. § 112.7(i) because, while the Plan at Part 15.0 indicates that all aboveground storage tanks at the Facility undergo integrity testing that includes brittle fracture evaluation, Respondent did not provide EPA any documentation demonstrating that it conducted brittle fracture evaluations on all aboveground storage tanks, in

violation of 40 C.F.R. § 112.7(i).

Count 11 – Violations of 40 C.F.R. § 112.8(b): Facility Drainage

3.39. 40 C.F.R. § 112.8 requires, among other things, that Respondent must meet the general requirements for the Plan listed under § 112.7 and the specific discharge prevention and containment procedures for (b) facility drainage.

3.40. Under 40 C.F.R. § 112.8(b)(2), if Respondent's "facility drainage drains directly into a watercourse and not into an on-site wastewater treatment plant," it "must inspect and may drain uncontaminated retained stormwater, as provided in paragraphs (c)(3) (ii), (iii), and (iv) of this section."

3.40.1. The Plan does not comply with 40 C.F.R. § 112.8(c)(3)(ii) and thus violates 40 C.F.R. § 112.8(b)(2) because, while the Plan states that Respondent observes accumulated water in containment for sheen and removes any sheen with sorbent materials or manual skimming, Respondent stated during the 2021 Inspection that it routinely adds Oil Eater to accumulated containment water as a treatment regardless of whether sheen is present. This practice emulsifies oil in the accumulated water, which would allow it to bypass the separators and discharge from the Facility.

3.41. Under 40 C.F.R. § 112.8(b)(3), Respondent must: "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."

3.41.1. The Plan implies incorrectly at Part 6.6 that the three oil/water separators' 550/1200-gallon capacities are oil retention capacities; the Plan's references to the separators do not accurately represent the operational design oil retention

capacities of the separators apparently installed at the Facility. Consequently, the Facility's drainage is not designed to flow into ponds, lagoons or containment basis designed to retain oil or return it to the Facility.

3.42. The Plan indicates that each of the Facility's sewer lines are equipped with an oil/water separator capable of processing 200-gallons per minute; however, the models used at the Facility have either 100- or 50-gallons per minute flow rates. The Plan does not describe what rain flow contributions occur from Facility office and warehouse roofs to the separator watersheds that could affect average peak flow rate estimates. Consequently, the Facility's drainage is not designed to flow into ponds, lagoons or containment basis designed to retain oil or return it to the Facility.

3.42.1. The Revised Plan indicates that, depending on location of the oil storage containers within the warehouses, a container spill could exit the warehouse and flow across paved areas toward one of the storm drains within the Facility's bermed perimeter; the oil/water separator would then provide secondary containment. The Plan indicates, depending on container location within the warehouse, spills may exit the warehouses with the potential to exceed the receiving oil/water separators' oil retention capacities by 75–1,040 gallons. Therefore, drainage from the undiked warehouse does not drain into ponds, lagoons, or catchment basins designed to retain oil or return it to the facility.

3.42.2. The Revised Plan indicates that the Lube Oil Tank Farm lacks adequate secondary containment to retain oil from a transfer area spill and return it to the Facility.

3.42.3. Plan fails to address stormwater runoff flows associated with the Facility's office and warehouse roofs. The Revised Plan fails to show that oil/water separators design hydraulic flow capacities are sufficient to retain oil and lacks a diversion

system that would retain oil in the facility in the event of an uncontrolled discharge.

3.43. If facility drainage is not engineered as in paragraph (b)(3), Respondent must "equip the final discharge of all ditches inside the facility with a diversion system that would, in the event of an uncontrolled discharge, retain oil in the facility." 40 C.F.R. § 112.8(b)(4).

3.43.1. The Plan does not comply with 40 C.F.R. § 112.8(b)(4) because Respondent's oil/water separator capacities are insufficient to accomplish the Plan's expected oil retention. Therefore, Respondent has failed to equip the final discharge of all ditches inside the Facility with a diversion system that would, in the event of an uncontrolled discharge, retain oil in the Facility.

3.44. The Plan indicates that each of the Facility's sewer lines are equipped with an oil/water separator capable of processing 200-gallons per minute; however, the models used at the Facility have either 100- or 50-gallons per minute flow rates. The oil water separators' oil retention capacities are not adequate to retain worst-case spills from the warehouse or the Lube Oil Tank Farm transfer area. Additionally, the Plan and Revised Plan do not describe what rain flow contributions occur from Facility office and warehouse roofs to the separator watersheds that could affect average peak flow rate estimates. Consequently, the Facility's drainage is not designed to flow into ponds, lagoons or catchment basins designed to retain oil or return it to the Facility.

3.44.1. The Revised Plan indicates that, depending on location of the oil storage containers within the warehouses, a container spill could exit the warehouse and flow across paved areas toward one of the storm drains within the Facility's bermed perimeter; the oil/water separators would then be needed to provide secondary containment. The Revised Plan indicates, depending on container

location within the warehouse, spills may exit the warehouses with the potential to exceed the receiving oil/water separators' oil retention capacities by 75–1,040 gallons. The Plan details no diversion system that would, in the event of an uncontrolled discharge, retain oil in the facility.

3.44.2. The Revised Plan indicates that the Lube Oil Tank Farm has no diversion system that would retain oil in the facility in the event of an uncontrolled discharge.

3.44.3. The Revised Plan fails to address stormwater runoff flows associated with the Facility's office and warehouse roofs. The Revised Plan fails to show that oil/water separators design hydraulic flow capacities are sufficient to retain oil and lacks a diversion system that would retain oil in the facility in the event of an uncontrolled discharge.

Count 12 – Violations of 40 C.F.R. § 112.8(c): Sized Secondary Containment

3.45. 40 C.F.R. § 112.8 requires, among other things, that Respondent must meet the general requirements for the Plan listed under § 112.7 and the specific discharge prevention and containment procedures for (c) Bulk storage containers.

3.46. Under this subsection, Respondent must: "(2) Construct all bulk storage tank installations … so that it provides a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation." Respondent "must ensure that diked areas are sufficiently impervious to contain discharged oil."

3.46.1. The Revised Plan does not comply with 40 C.F.R. § 112.8(c)(2) because it does not discuss installing sized secondary containment to address undersized secondary containment for the Lube Oil Tank Farm, or detail schedules for its implementation.

3.46.2. The Lube Oil Tank Farm concrete-walled containment lacks adequate secondary

containment, but the Revised Plan does not include any detailed discussion of the specific corrective actions and schedules for correcting this inadequacy.

3.46.3. The Revised Plan indicates that the warehouses contain oil storage containers including totes. While the Plan asserts that the warehouse walls provide secondary containment, the containment volume provided is not specified, nor does the Revised Plan discuss the impact of doors, loading dock entries, etc. on secondary containment. Therefore, the Revised Plan does not provide for adequate containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation.

3.47. Under this subsection, Respondent must: "(3) not allow drainage of uncontaminated rainwater from the diked area into a storm drain or discharge of an effluent into an open watercourse, lake, or pond, bypassing the facility treatment system unless" Respondent, among other things "(ii) inspects the retained rainwater to ensure that its presence will not cause a discharge. . ."

3.47.1. The Plan does not comply with 40 C.F.R. § 112.8(c)(3) because during the inspection, Respondent indicated that it routinely adds Oil Eater to accumulated containment water as a treatment regardless of whether sheen is present or not. Respondent is not approved to use dispersants or emulsifiers to address oil in Facility secondary containment areas or in accumulated containment water. Oil Eater would cause oil present in the wastewater to emulsify. Respondent's use of Oil Eater for treatment of oil present in the accumulated containment water indicates Respondent did not inspect for purposes of removing oil as presented in the Plan to ensure the oil-contamination would not cause a discharge, in violation of 40 C.F.R. § 112.8(c)(3)(ii).

3.48. Under 40 C.F.R. § 112.8(c)(6), Respondent must "test or inspect each aboveground

container for integrity on a regular schedule and whenever it makes material repairs." Respondent "must determine, in accordance with industry standards, the appropriate qualifications for personnel performing tests and inspections, the frequency and type of testing and inspections, which take into account container size, configuration, and design …" Respondent "must keep comparison records and must also inspect the container's supports and foundations. In addition," Respondent "must frequently inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. Records of inspections and tests kept under usual and customary business practices satisfy the recordkeeping requirements of this paragraph."

3.48.1. The Plan does not comply with 40 C.F.R. § 112.8(c)(6) because it does not expressly identify the exact industry standard the Respondent has determined is applicable for the formal integrity testing and inspections to be conducted by the standard-certified inspectors. By implication, Part 18.10 of the Plan identifies the use of the STI SP-001 periodic inspection checklists for the Facility staff's routine, periodic inspections. The Plan does not expressly include applicable provisions related to (1) retention of comparison records of aboveground storage tank integrity testing reports; (2) container supports and foundations inspection; and (3) frequent inspection of container outsides for signs of deterioration, discharges, and accumulations of oil inside diked areas.

3.48.2. The Revised Plan does not comply with 40 C.F.R. § 112.8(c)(6) because it does not expressly identify the industry standard on a tank-by-tank basis that the Professional Engineer has determined is applicable for the formal integrity testing and inspections of the Facility's aboveground storage tanks. The Revised Plan only identifies a tank-specific schedule for the

next formal integrity testing and inspection. The Revised Plan does not include a schedule for these inspections thereafter. The Revised Plan also fails to include any express inspection procedure or inspection frequency for mobile and portable containers. The Revised Plan's monthly inspection and recording form does not include any inspection provisions related to mobile and/or portable oil storage containers like drums and totes. The Revised Plan does not require that Respondent test and inspect aboveground containers for integrity on a regular schedule and does not identify the frequency and type of testing or inspection in accordance with the industry standards.

3.48.3. The Revised Plan only requires integrity testing records be retained for at least five years. The industry standard requires Respondent to maintain integrity testing and inspection reports by certified inspectors be maintained by the tank owner/operator the life of the tank. The Revised Plan fails to justify the deviation from the 112.8(c)(6) comparison records retention requirement with a professional engineer-generated environmental equivalence evaluation and determination.

3.49. Under 40 C.F.R. § 112.8(c)(10), Respondent must "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." Respondent "must promptly remove any accumulations of oil in diked areas."

3.49.1. The Plan does not comply with 40 C.F.R. § 112.8(c)(10) because it indicates Respondent cleans spilled oil with sorbent materials or manual skimming, but at the 2021 Inspection, Respondent indicated that it routinely adds Oil Eater to accumulated containment water that shows

sheen from spilled oil. Oil Eater would emulsify oil, making inspections for visible discharges less effective or futile. While Respondent represents that it uses manual removal methods to promptly remove oil accumulations in diked areas, emulsification would reduce or eliminate Respondent's ability to promptly do so.

3.50. Under 40 C.F.R. § 112.8(c)(11), Respondent must "Position or locate mobile or portable oil storage containers to prevent a discharge as described in § 112.1(b) …" Respondent "must 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."

3.50.1. The Plan and Revised Plan do not comply with 40 C.F.R. § 112.8(c)(11) because they do not sufficiently demonstrate that the warehouse walls provide adequate secondary containment for the entire capacity of the largest single container stored inside.

Count 13 – Violations of 40 C.F.R. § 112.8(d)

3.51. 40 C.F.R. § 112.8 requires, among other things, that Respondent must meet the general requirements for the Plan listed under § 112.7 and the specific discharge prevention and containment procedures for (d) facility transfer operations, pumping and facility process.

3.52. Under § 112.8(d)(1), Respondent must "Provide buried piping that is installed or replaced on or after August 16, 2002, with a protective wrapping and coating." Respondent "must also cathodically protect such buried piping installations or otherwise satisfy the corrosion protection standards for piping in part 280 of this chapter or a state program approved under part 281 of this chapter. If a section of buried line is exposed for any reason," Respondent "must carefully inspect it for deterioration." If Respondent "finds

corrosion damage," it "must undertake additional examination and corrective action as indicated by the magnitude of the damage."

3.52.1. The Plan and Revised Plan do not comply with 40 C.F.R. § 112.8(d)(1) because they do not include the specific language regarding buried piping contained in that subsection.

3.53. Under 40 C.F.R. § 112.8(d)(4), Respondent must "Regularly inspect all aboveground valves, piping, and appurtenances. During the inspection" Respondent "must assess the general condition of items, such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, locking of valves, and metal surfaces." Respondent "must also conduct integrity and leak testing of buried piping at the time of installation, modification, construction, relocation, or replacement."

3.53.1. The Plan does not comply with 40 C.F.R. § 112.8(d)(4) because it does not include the specific language regarding integrity and leak testing of buried piping contained in that subsection.

IV. TERMS OF SETTLEMENT

4.1. 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 these factors, EPA has determined that an appropriate penalty to settle this action is $87,700.00 (Assessed Penalty).

4.4. Respondent consents to the assessment of the Assessed Penalty set forth in Paragraph 4.3 and agrees to pay the total Assessed Penalty within 30 days after the date of the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk (Filing Date).

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

4.6. When making a payment, Respondent shall:

4.6.1. Identify every payment with Respondent's name and the docket number of this Agreement, CWA-10-2024-0100;

4.6.2. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of payment electronically to the following person(s):

Regional Hearing Clerk U.S. Environmental Protection Agency, Region 10 1200 Sixth Avenue, Suite 155 Seattle, Washington 98101 R10_RHC@epa.gov	Rick Cool U.S. Environmental Protection Agency, Region 10 1200 Sixth Avenue, Suite 155 Seattle, Washington 98101 Cool.Richard@epa.gov	U.S. Environmental Protection Agency Cincinnati Finance Center Via electronic mail to: CINWD_AcctsReceivable@epa.gov

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

4.7. Interest, Charges, and Penalties on Late Payments

Pursuant to 33 U.S.C. § 1321(b)(6)(H), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

4.7.1. Interest

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

4.7.2. Handling Charges

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

4.7.3. Late Payment Penalty

A twenty percent (20%) quarterly non-payment penalty.

4.8. Late Penalty Actions

In addition to the amounts described in Paragraph 4.7, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Consent Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following:

4.8.1. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14;

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

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

4.8.4. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 33 U.S.C. § 1321(b)(6)(H). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.9. Allocation of Payments

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

4.10. Tax Treatment of Penalties

Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

4.11. EPA Reports to IRS

Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the IRS annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement, including administrative settlements, that require a payor to pay an aggregate amount that EPA reasonably

believes will be equal to, or in excess of, $50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with the law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (TIN), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

4.11.1. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at https://www.irs.gov/pub/irs-pdf/fw9.pdf;

4.11.2. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;

4.11.3. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at henderson.jessica@epa.gov within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

4.11.4. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

4.12. 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.

4.13. 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.

4.14. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.15. 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.

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

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

DATED:
10/2/2024

FOR RESPONDENT:
Trent Tyree
Digitally signed by Trent Tyree
Date: 2024.10.02 15:32:38 -07'00'

Trent Tyree, Chief Operating Officer
Tyree Oil, Inc.

DATED:
10/2/2024

FOR COMPLAINANT:
JEFFERY KENKNIGHT
Digitally signed by JEFFERY KENKNIGHT
Date: 2024.11.25 08:11:18 -08'00'

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

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: TYREE OIL, INC. 2429 North Borthwick Avenue Portland, Oregon 97227 Respondent.	DOCKET NO. CWA-10-2024-0100 **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.

4. This Final Order shall become effective upon filing.

IT IS SO ORDERED.

Mednick, Richard
Digitally signed by Mednick, Richard
Date: 2024.11.25 16:36:07 -08'00'

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10