BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: JACKSON & SON DISTRIBUTORS, INC., dba JACKSON AND SON OIL, Seaside, Oregon, Respondent.	DOCKET NO. CWA-10-2025-0023 **COMPLAINT**

I. STATUTORY AUTHORITY

1.1. This administrative complaint ("Complaint") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA" or "Complainant") by Section 311(b)(6) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6). The Administrator has delegated this authority to the Regional Administrator of EPA Region 10, who in turn has redelegated this authority to the Director of the Enforcement and Compliance Assurance Division in EPA Region 10.

1.2. Pursuant to CWA Section 311(b)(6)(B), 33 U.S.C. § 1321(b)(6)(B), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties" ("Part 22 Rules"), 40 C.F.R. Part 22, the EPA hereby proposes the assessment of a civil penalty against Jackson & Son Distributors, Inc., with an assumed business name of (doing business as) Jackson and Son Oil ("Respondent") for violations of the CWA.

II. STATUTORY AND REGULATORY BACKGROUND

2.1. As provided in CWA Section 101(a), 33 U.S.C. § 1251(a), the objective of the CWA is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a).

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

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

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

2.4. Pursuant to these delegated statutory authorities and pursuant to its authorities under the CWA, 33 U.S.C. § 1251 *et seq.,* to implement Section 31l(j), the EPA promulgated the Oil Pollution Prevention regulations in 40 C.F.R. Part 112, which 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," including requirements for preparation and implementation of a Spill Prevention Control and Countermeasure ("SPCC") Plan. 40 C.F.R. § 112.1(a)(1). CWA Section 311, 33 U.S.C. § 1321, uses the phrase "navigable waters of the United States," which the EPA and the courts construe to have the same meaning as the phrase "navigable waters," used elsewhere in CWA Section 311 and in other sections of the CWA. *Rice v. Harken Exploration Co.,* 250 F.3d 264 (5th Cir. 2001).

2.5. The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore facilities that are "engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil and oil products" and that have oil in any aboveground container or any container that is used for standby storage,

for seasonal storage, or for temporary storage, or not otherwise "permanently closed" as defined in 40 C.F.R. § 112.2, 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. 40 C.F.R. § 112.1(b).

2.6. The requirements of 40 C.F.R. Part 112 do not apply if the aggregate aboveground storage capacity of the facility is 1,320 U.S. gallons or less of oil. 40 C.F.R. § 112.1(d). The aggregate aboveground storage capacity excludes containers with a capacity of less than 55 U.S. gallons and the capacity of a container that is "permanently closed" as defined in 40 C.F.R. § 112.2.

2.7. The regulations define "onshore facility" to mean "any facility of any kind located in, on, or under, any land within the United States other than submerged lands." 40 C.F.R. § 112.2.

2.8. The regulations define "owner or operator" to include "any person owning or operating an onshore facility." 40 C.F.R. § 112.2.

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

2.10. "Non-transportation-related," as applied to an on-shore facility is defined to include "industrial, commercial, agricultural, or public facilities which use and store oil"; "oil storage facilities including all equipment and appurtenances related thereto"; and "[l]oading racks, transfer hoses, loading arms and other equipment which are appurtenant to a non-transportation-related facility." 40 C.F.R. Pt. 112, App. A.

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

2.12. The regulations define "storage capacity" of a container to mean the "shell capacity of the container." 40 C.F.R. § 112.2.

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

2.14. "Wetlands" are defined as "areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas." 40 C.F.R. § 120.2(c).

2.15. The regulations define a discharge of oil in quantities as "may be harmful" to include discharges of oil that "[v]iolate applicable water quality standards" or "[c]ause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines." 40 C.F.R. § 110.3; 40 C.F.R. § 112.1(b).

2.16. 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. 40 C.F.R. §§ 112.1, 112.3.

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

III. ALLEGATIONS

3.1. Respondent is a domestic business corporation conducting business in the state of Oregon, and is a "person" under CWA Section 311(a)(7), 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

3.2. Beginning in 1984, and at all times relevant to this Complaint, Respondent was and is 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 84721 Happel Lane in Seaside, Oregon ("Facility"). At all times relevant to this Complaint, the Facility was and is a petroleum product distributor.

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

3.4. The Facility is "non-transportation-related" within the meaning of 40 C.F.R. § 112.2, 40 C.F.R. Pt. 112, App. A.

3.5. On June 18, 2015, the EPA emailed Respondent and provided information about the 40 C.F.R. Part 112 regulations, including an EPA website with information, and stated that the 40 C.F.R. Part 112 regulations "commonly apply to oil storage and handling facilities such as yours."

3.6. On September 21, 2021, authorized EPA representatives inspected the Facility to determine compliance with Section 311(j) of the CWA and the requirements of 40 C.F.R. Part 112 ("Inspection"). The EPA transmitted the inspection report generated as a result of the Inspection to Respondent in a letter dated January 20, 2022.

3.7. At the time of the Inspection and at all times relevant to this Complaint, Respondent was engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products at the Facility, as described in 40

C.F.R. § 112.1(b).

3.8. At the time of the Inspection and at all times relevant to this Complaint, the Facility had an aggregate above-ground storage capacity greater than 1,320 gallons of oil in containers, each with a shell capacity of at least 55 gallons. At the time of the Inspection, the Facility had an approximate above-ground storage capacity of at least 107,500 gallons of oil, including two 10,000-gallon diesel tanks without secondary containment.

3.9. On April 5, 2023, Powers Engineering and Inspection, Inc. conducted integrity testing of seven aboveground storage tanks that were present at the time of the Inspection: a 2,500 gallon diesel tank; a 3,000 gallon gasoline tank; a 2,000 gallon gasoline tank; two 20,000 gallon gasoline tanks; and two 20,000 gallon diesel tanks.

3.10. At the time of the Inspection and at all times relevant to this Complaint, there is a reasonable expectation that a discharge of oil from the Facility would flow south and west directly to Circle Creek or north via multiple pathways to field-verified and National Wetlands Inventory-mapped wetlands ("wetlands"). The wetlands meet the regulatory definition of "wetlands" in 40 C.F.R. § 120.2(c) based, *inter alia*, on soil type, hydrology, and the plant species present. These wetlands abut and have a continuous surface connection to a relatively permanent tributary ("unnamed tributary") of Circle Creek that flows approximately 50 feet before connecting to Circle Creek. Circle Creek is relatively permanent at all relevant reaches, both in the vicinity of the Facility where there is a reasonable expectation that oil may flow into it, and at the confluence with the unnamed tributary and downstream. Circle Creek flows approximately 2.4 miles and then connects to the Necanicum River, a relatively permanent river. Circle Creek connects to the Necanicum River at approximately river mile 5.2. The Necanicum River is relatively permanent at the confluence with Circle Creek and downstream. The Necanicum River then becomes a traditional navigable water prior to entering the Pacific Ocean.

The United States Army Corps of Engineers has documented the Necanicum River as navigable for purposes of Section 10 of the Rivers and Harbors Act up to river mile 3; traditional navigable waters include Section 10 waters. The Necanicum River is also subject to the ebb and flow of the tide in the lower 2 river miles before it connects to the Pacific Ocean, further supporting that the river is a traditional navigable water in its lower 2 miles. The Pacific Ocean is part of the territorial seas and is a traditional navigable water, as it is subject to the ebb and flow of the tide and is currently used and was used in the past, in interstate and foreign commerce. As such, the wetlands, unnamed tributary, Circle Creek, Necanicum River, and the Pacific Ocean are each a "navigable water" within the meaning of CWA § 502(7), 33 U.S.C. § 1362(7).

3.11. At the time of the Inspection and at all times relevant to this Complaint, the Facility could reasonably be expected to discharge oil in quantities that may be harmful to or upon the navigable waters of the United States or adjoining shorelines based on several factors, including the worst-case planning volume of 40,000 gallons, 40 C.F.R. Pt. 112, App. D; the Facility and surrounding area's topography and drainage patterns; the distance between the Facility and navigable waters (approximately 150 meters); and the physical properties of oil infiltration and flow.

3.12. Circle Creek is home to many species, including one of the most iconic anadromous fish, salmon. Coho salmon rear and migrate in Circle Creek.[1] The Oregon Coast Coho Salmon Evolutionary Significant Unit, which includes Coho salmon that rear and migrate in Circle Creek, is listed as threatened pursuant to the Endangered Species Act.[2] As a result,

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[1] *National NMFS ESA Critical Habitat Mapper*, Nat'l Oceanic & Atmospheric Admin., https://www.fisheries.noaa.gov/resource/map/national-esa-critical-habitat-mapper (last visited Dec. 5, 2024) (navigate to the search bar and enter terms "Circle Creek, Oregon"; select the results tab titled "All_critical_habitat_line_20220404", and scroll down species list to view listing and habitat status for Salmon, coho.).

[2] *Id.; see also Oregon Coast Coho Salmon*, Nat'l Oceanic & Atmospheric Admin., https://www.fisheries.noaa.gov/west-coast/endangered-species-conservation/oregon-coast-coho-salmon (last updated Aug. 21, 2024).

maintaining high water quality and preventing the discharge of oil into Circle Creek is of utmost importance.

3.13. Homes and businesses are both next to the Facility and within the flow paths of a reasonable expectation of a discharge of oil from the Facility. For example, a lumberyard is located directly to the north and its employees and customers could be impacted by a worst-case discharge from the Facility. In addition, a worst-case discharge could impact private property and homes.

3.14. Accordingly, the Facility is a non-transportation-related, onshore facility that, due to location, could reasonably be expected, at the time of the Inspection and at all times relevant to the Complaint, to discharge oil to or upon the navigable waters of the United States or adjoining shorelines in a harmful quantity. The Facility is therefore subject to the regulations at 40 C.F.R. Part 112.

Violations

Count 1: Failure to Prepare and Implement SPCC Plan

3.15. 40 C.F.R. § 112.3 requires that the owner or operator of an onshore facility subject to Part 112 prepare in writing and implement an SPCC Plan in accordance with 40 C.F.R. § 112.7.

3.16. At the time of the Inspection and at all times relevant to this Complaint, Respondent failed to prepare and implement an SPCC Plan, in violation of 40 C.F.R. § 112.3.

3.17. On information and belief, Respondent has violated this requirement for the full five-year statute of limitations prior to filing this Complaint, for a total of 1,825 days in violation of 40 C.F.R. § 112.3. This is a major violation that essentially undermines the ability of Respondent to prevent or respond to a worst-case spill at the Facility.

3.18. Pursuant to CWA Section 311(b)(6), 33 U.S.C. § 1321(b)(6), the 2015

amendments to the Federal Civil Penalty Inflation Adjustment Act, 28 U.S.C. § 2461, and 40 C.F.R. Part 19, Respondent is liable for the administrative assessment of civil penalties of up to $23,048 per day for each day during which the violation continues, up to a maximum penalty of $288,080. *See also* 87 Fed. Reg. 89,309 (December 27, 2023) (Civil Monetary Inflation Adjustment Rule).

Counts 2-3: Failure to Provide Adequate Secondary Containment

3.19. The regulations at 40 C.F.R. § 112.7(c) require the owner or operator to 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.

3.20. The regulations at 40 C.F.R. § 112.8(c)(2) require that all bulk storage tank installations provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation.

3.21. At the time of the Inspection and at all times relevant to this Complaint, the Facility stored two single-walled aboveground bulk storage tanks containing diesel fuel, each with a capacity of 10,000 gallons, on bare soil with no liner. At the time of the Inspection and at all times relevant to this Complaint, Respondent failed to provide secondary containment for the two 10,000-gallon diesel tanks, in violation of 40 C.F.R. §§ 112.7(c) and 112.8(c)(2).

3.22. On information and belief, Respondent has violated these requirements for the full five-year statute of limitations prior to filing this Complaint, for a total of 1,825 days in violation of 40 C.F.R. §§ 112.7(c) and 112.8(c)(2). These are major violations that essentially undermine the ability of Respondent to prevent or respond to a worst-case spill at the Facility.

3.23. Pursuant to CWA Section 311(b)(6), 33 U.S.C. § 1321(b)(6), the 2015

amendments to the Federal Civil Penalty Inflation Adjustment Act, 28 U.S.C. § 2461, and 40 C.F.R. Part 19, Respondent is liable for the administrative assessment of civil penalties of up to $23,048 per day for each day during which the violations continue, up to a maximum penalty of $288,080. *See also* 87 Fed. Reg. 89,309 (December 27, 2023) (Civil Monetary Inflation Adjustment Rule).

Counts 4-5: Failure to Properly Design Facility Drainage Systems from Transfer Areas

3.24. The regulations require the owner or operator 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." 40 C.F.R. § 112.8(b)(3).

3.25. If facility drainage is not engineered as required in 40 C.F.R. § 112.8(b)(3), the owner or operator shall "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).

3.26. At the time of the Inspection and at all times relevant to this Complaint, two diesel and gasoline transfer areas were located at the Facility. The eastern diesel transfer area contains a single storm drain, and the southern diesel and gasoline transfer area contains two storm drains. Each storm drain conveys water to the storm drain culvert on the eastern boundary of the Facility. The Facility collectively refers to this area as the "Cardlock area."

3.27. At the time of the Inspection and at all times relevant to this Complaint, Respondent failed to design a drainage system from the eastern diesel transfer area to flow into basins designed to retain oil, in violation of 40 C.F.R. § 112.8(b)(3) and (4).

3.28. At the time of the Inspection and at all times relevant to this Complaint, Respondent failed to design a drainage system from the southern diesel and gasoline transfer area to flow into basins designed to retain oil, in violation of 40 C.F.R. § 112.8(b)(3) and (4).

3.29. On information and belief, Respondent has violated these requirements for the full five-year statute of limitations prior to filing this Complaint, for a total of 1,825 days in violation of 40 C.F.R. § 112.8(b)(3) and (4). These are major violations that essentially undermine the ability of Respondent to prevent or respond to a worst-case spill at the Facility.

3.30. Pursuant to CWA Section 311(b)(6), 33 U.S.C. § 1321(b)(6), the 2015 amendments to the Federal Civil Penalty Inflation Adjustment Act, 28 U.S.C. § 2461, and 40 C.F.R. Part 19, Respondent is liable for the administrative assessment of civil penalties of up to $23,048 per day for each day during which the violations continue, up to a maximum penalty of $288,080. *See also* 87 Fed. Reg. 89,309 (December 27, 2023) (Civil Monetary Inflation Adjustment Rule).

Count 6: Failure to Provide Sufficient Containment at Loading/Unloading Rack

3.31. 40 C.F.R. § 112.7(h)(1) requires that containment systems for drainage from loading/unloading racks "hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the facility."

3.32. The Facility's loading/unloading racks drain to a single sump with a capacity of 100 gallons.

3.33. The maximum capacity of any single compartment of a tank truck loaded or unloaded at the Facility is 3,300 gallons.

3.34. At the time of the Inspection and at all times relevant to this Complaint, Respondent failed to provide adequate containment for drainage at the loading/unloading rack, in violation of 40 C.F.R. § 112.7(h)(1).

3.35. On information and belief, Respondent has violated these requirements for the full five-year statute of limitations prior to filing this Complaint, for a total of 1,825 days in violation of 40 C.F.R. § 112.7(h)(1). This is a major violation that essentially undermines the ability of

Respondent to prevent or respond to a worst-case spill at the Facility.

3.36. Pursuant to CWA Section 311(b)(6), 33 U.S.C. § 1321(b)(6), the 2015 amendments to the Federal Civil Penalty Inflation Adjustment Act, 28 U.S.C. § 2461, and 40 C.F.R. Part 19, Respondent is liable for the administrative assessment of civil penalties of up to $23,048 per day for each day during which the violation continues, up to a maximum penalty of $288,080. *See also* 87 Fed. Reg. 89,309 (December 27, 2023) (Civil Monetary Inflation Adjustment Rule).

Counts 7-16: Failure to Conduct and Maintain a Procedure and Schedule for Integrity Testing

3.37. The owner or operator shall test or inspect each aboveground container for integrity on a regular schedule and whenever material repairs are completed. The owner or operator 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 (such as containers that are: shop-built, field-erected, skid-mounted, elevated, equipped with a liner, double-walled, or partially buried)." 40 C.F.R. § 112.8(c)(6). Records of inspections and tests shall be maintained under usual and customary business practices. 40 C.F.R. § 112.8(c)(6).

3.38. At the time of the Inspection, Respondent did not have any documentation that integrity testing had ever been conducted on any of the Facility's nine aboveground storage containers, described in paragraphs 3.8 and 3.9 of this Complaint.

3.39. At the time of the Inspection and, upon information and belief, at all times through April 5, 2023, Respondent failed to conduct integrity testing of seven of its aboveground storage containers, described in paragraph 3.8 of this Complaint, in violation of 40 C.F.R. § 112.8(c)(6). On information and belief, Respondent has violated this requirement for a total of 561 days in violation of 40 C.F.R. § 112.8(c)(6). This is a moderate violation that presents a

significant impact on the ability of the Respondent to prevent or respond to a worst-case spill at the Facility.

3.40. At the time of the Inspection and, upon information and belief, at all times relevant to this Complaint, Respondent failed to conduct integrity testing of the two aboveground storage containers that lack secondary containment, as described in paragraph 3.8 of this Complaint. On information and belief, Respondent has violated these requirements for the full five-year statute of limitations prior to filing this Complaint, for a total of 1,825 days in violation of 40 C.F.R. § 112.7(h)(1). These are moderate violations that present a significant impact on the ability of the Respondent to prevent or respond to a worst-case spill at the Facility.

3.41. At the time of the Inspection and, upon information and belief, at all times relevant to this Complaint, Respondent failed to develop, in accordance with industry standards, an integrity testing procedure and schedule for the Facility, which is a violation of 40 C.F.R. § 112.8(c)(6). On information and belief, Respondent has violated this requirement for the full five-year statute of limitations prior to filing this Complaint, for a total of 1,825 days in violation of 40 C.F.R. § 112.8(c)(6). This is a moderate violation that presents a significant impact on the ability of the Respondent to prevent or respond to a worst-case spill at the Facility.

3.42. Pursuant to CWA Section 311(b)(6), 33 U.S.C. § 1321(b)(6), the 2015 amendments to the Federal Civil Penalty Inflation Adjustment Act, 28 U.S.C. § 2461, and 40 C.F.R. Part 19, Respondent is liable for the administrative assessment of civil penalties of up to $23,048 per day for each day during which the violations continue, up to a maximum penalty of $288,080. *See also* 87 Fed. Reg. 89,309 (December 27, 2023) (Civil Monetary Inflation Adjustment Rule).

Counts 17-18: Failure to Conduct and Maintain Records of Inspections and Tests

3.43. 40 C.F.R. § 112.7(e) requires that owners or operators conduct inspections and

tests in accordance with written procedures developed for the facility. The written procedures and a record of the inspections and tests must be maintained for a period of three years.

3.44. During the Inspection, Respondent was unable to produce documentation of any inspections, tests, or written procedures for tests and inspections.

3.45. At the time of the Inspection and, upon information and belief, at all times relevant to this Complaint, Respondent failed to conduct inspections and tests in accordance with written procedures developed for the Facility, in violation of 40 C.F.R. § 112.7(e).

3.46. For the three-year period prior to the Inspection and, upon information at belief, at all times relevant to this Complaint, Respondent failed to maintain written procedures and a record of the inspections and tests, in violation of 40 C.F.R. § 112.7(e).

3.47. On information and belief, Respondent has violated these requirements for the full five-year statute of limitations prior to filing this Complaint, for a total of 1,825 days in violation of 40 C.F.R. § 112.7(e). These are moderate violations that present a significant impact on the ability of the Respondent to prevent or respond to a worst-case spill at the Facility.

3.48. Pursuant to CWA Section 311(b)(6), 33 U.S.C. § 1321(b)(6), the 2015 amendments to the Federal Civil Penalty Inflation Adjustment Act, 28 U.S.C. § 2461, and 40 C.F.R. Part 19, Respondent is liable for the administrative assessment of civil penalties of up to $23,048 per day for each day during which the violations continue, up to a maximum penalty of $288,080. *See also* 87 Fed. Reg. 89,309 (December 27, 2023) (Civil Monetary Inflation Adjustment Rule).

Count 19: Failure to Provide Warning Lights or Barrier System at Loading/Unloading Rack

3.49. Owners or operators are required to provide an interlocked warning light or physical barrier system, warning signs, wheel chocks or vehicle brake interlock system in the area adjacent to a loading/unloading rack, to prevent vehicles from departing before complete

disconnection of flexible or fixed oil transfer lines. 40 C.F.R. § 112.7(h)(2).

3.50. At the time of the Inspection and, upon information and belief, at all times through April 23, 2023, Respondent failed to employ an interlocked warning light or physical barrier system, warning signs, wheel chocks or vehicle brake interlock system in the area adjacent to the loading/unloading rack, in violation of 40 C.F.R. § 112.7(h)(2).

3.51. On information and belief, Respondent has violated these requirements for a total of 579 days in violation of 40 C.F.R. § 112.7(h)(2). This is a moderate violation that presents a significant impact on the ability of the Respondent to prevent or respond to a worst-case spill at the Facility.

3.52. Pursuant to CWA Section 311(b)(6), 33 U.S.C. § 1321(b)(6), the 2015 amendments to the Federal Civil Penalty Inflation Adjustment Act, 28 U.S.C. § 2461, and 40 C.F.R. Part 19, Respondent is liable for the administrative assessment of civil penalties of up to $23,048 per day for each day during which the violation continues, up to a maximum penalty of $288,080. *See also* 87 Fed. Reg. 89,309 (December 27, 2023) (Civil Monetary Inflation Adjustment Rule).

Counts 20-28: Failure to Employ Devices to Avoid Discharges

3.53. 40 C.F.R. § 112.8(c)(8) requires that facilities engineer or update each container installation to avoid discharges by providing at least one of the following devices: (a) high liquid level alarms with an audible or visual signal at a constantly attended operation or surveillance station (at smaller facilities, an audible air vent may suffice); (b) high liquid level pump cutoff devices set to stop flow at a predetermined container content level; (c) direct audible or code signal communication between container gauger and the pumping station; or (d) a fast response system for determining the liquid level of each bulk storage container such as digital computers, telepulse, or direct vision gauges.

3.54. At the time of the Inspection and, upon information and belief, at all times through April of 2023, the Facility's container installations did not employ discharge prevention devices on any of its nine aboveground storage containers, described in paragraphs 3.8 and 3.9 of this Complaint, in violation of 40 C.F.R. § 112.8(c)(8).

3.55. On information and belief, Respondent has violated these requirements for a total of 586 days in violation of 40 C.F.R. § 112.8(c)(8). These are moderate violations that present a significant impact on the ability of the Respondent to prevent or respond to a worst-case spill at the Facility.

3.56. Pursuant to CWA Section 311(b)(6), 33 U.S.C. § 1321(b)(6), the 2015 amendments to the Federal Civil Penalty Inflation Adjustment Act, 28 U.S.C. § 2461, and 40 C.F.R. Part 19, Respondent is liable for the administrative assessment of civil penalties of up to $23,048 per day for each day during which the violations continue, up to a maximum penalty of $288,080. *See also* 87 Fed. Reg. 89,309 (December 27, 2023) (Civil Monetary Inflation Adjustment Rule).

IV. PROPOSED PENALTY

4.1. Based on the foregoing allegations, Respondent violated the 40 C.F.R. Part 112 regulations issued pursuant to CWA Section 311(j), 33 U.S.C. § 1321(j). Consequently, pursuant to CWA Section 311(b)(6), 33 U.S.C. § 1321(b)(6), the 2015 amendments to the Federal Civil Penalty Inflation Adjustment Act, 28 U.S.C. § 2461, and 40 C.F.R. Part 19, Respondent is liable for the administrative assessment of civil penalties for violations in an amount not to exceed $23,048 per day for each day during which the violation continues, up to a maximum penalty of $288,080. *See also* 87 Fed. Reg. 89,309 (December 27, 2023) (Civil Monetary Inflation Adjustment Rule). In accordance with 40 C.F.R. § 22.14(a)(4)(ii), Complainant proposes that a Final Order be issued to Respondent assessing an administrative penalty in an amount not to

exceed $23,048 per day for each day during which the violation continues, up to a maximum penalty of $288,080. The violations alleged in Section III represent significant violations and a disregard of the 40 C.F.R. Part 112 regulations. These violations significantly and effectively undermine the ability of the Respondent to prevent and respond to releases of oil at the Facility. Cumulatively, the violations indicate a lack of attention to response planning and implementation obligations required by the 40 C.F.R. Part 112 regulations, and increase the likelihood that a release of oil from the Facility may significantly impact the public health or welfare or the environment.

V. OPPORTUNITY TO REQUEST A HEARING

5.1. Respondent has the right to file an Answer requesting a hearing on any material fact contained in this Complaint or on the appropriateness of the penalty proposed herein. Upon request, the Presiding Officer may hold a hearing for the assessment of these civil penalties, conducted in accordance with the provisions of the Part 22 Rules and the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* A copy of the Part 22 Rules accompanies this Complaint.

5.2. Respondent's Answer, including any request for hearing, must comply with 40 C.F.R. § 22.15 and must be filed with the Regional Hearing Clerk within thirty (30) days after service of the Complaint, as determined by reference to 40 C.F.R. § 22.7(c).

5.3. The Part 22 Rules provide that "[t]he Presiding Officer . . . may by order authorize or require filing by facsimile or an electronic filing system subject to any appropriate conditions and limitations." 40 C.F.R. § 22.5(a)(1).

5.4. Pursuant to their authority as Presiding Officers, the Regional Judicial Officers of EPA Region 10 have issued a Standing Order to designate EPA's Outlook-based email system to serve as EPA Region 10's Electronic Filing System ("EFS"). The Standing Order does not require that documents be filed using the email EFS. Rather, it authorizes the use of the email

EFS as an option, in addition to those methods already authorized by the Part 22 Rules for the filing of documents with the Regional Hearing Clerk. A copy of the Standing Order accompanies this Complaint.

5.5. The original and one copy of the Answer to this Complaint, as well as the original and one copy of all other documents which Respondent files in this action, must be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue
Suite 155, M/S 11-C07
Seattle, Washington 98101

or if Respondent elects to use the email EFS, Respondent's Answer may be emailed to the Regional Hearing Clerk at R10_RHC@epa.gov.

VI. FAILURE TO FILE AN ANSWER

6.1. In accordance with 40 C.F.R. § 22.15, Respondent's Answer must "clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge." Respondent's Answer must also state: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) whether a hearing is requested. Failure to admit, deny, or explain any material factual allegation contained herein constitutes an admission of the allegation.

6.2. If Respondent fails to file a timely Answer to this Complaint, Respondent may be found to be in default, pursuant to 40 C.F.R. § 22.17, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

6.3. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in any default order shall become due and payable by Respondent without further proceedings thirty (30) days after the default order becomes final.

VII. INFORMAL SETTLEMENT CONFERENCE

7.1. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of settling this matter consistent with 40 C.F.R. § 22.18(b). To request such a settlement conference, Respondent should contact:

Ashley Bruner
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue
Suite 155, M/S 11-C07
Seattle, Washington 98101
(206) 553-0702
Bruner.Ashley@epa.gov

Note that a request for an informal settlement conference does not extend the thirty (30) day period of filing a written Answer to this Complaint, nor does it waive Respondent's right to request a hearing. 40 C.F.R. § 22.18(b).

7.2. Respondent is advised that, after the Complaint is issued, the Part 22 Rules prohibit any *ex parte* (unilateral) discussion of the merits of these or any other factually related proceedings with the Administrator, the Environmental Appeals Board or its members, the Regional Judicial Officer, the Presiding Officer, or any other person who is likely to advise these officials in the decision of this case.

VIII. RESERVATIONS

8.1. Neither assessment nor payment of an administrative civil penalty pursuant to this Complaint shall affect Respondent's continuing obligation to comply with: (1) the CWA and all other environmental statutes, and (2) the terms and conditions of all applicable CWA permits.

IX. PUBLIC NOTICE

9.1. Pursuant to Section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C), and 40 C.F.R. § 22.45(b), the Complainant shall provide public notice and meaningful opportunity to comment on any proposed Final Order assessing administrative penalties against Respondent. Notice shall be provided within 30 days following proof of service of the complaint on the Respondent and given using a method reasonably calculated to provide such notice. Complainant shall also provide notice directly to any person who requests such notice.

DATED:

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EDWARD KOWALSKI

Digitally signed by EDWARD KOWALSKI
Date: 2024.12.18 15:44:27 -08'00'

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