



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF ENFORCEMENT
AND COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: 2023 Spill Prevention, Control and Countermeasures Expedited Settlement Agreement

FROM: Rosemarie A. Kelley, Director **ROSEMARIE** Digitally signed by
Office of Civil Enforcement **KELLEY** ROSEMARIE KELLEY
Date: 2023.05.04
17:14:36 -04'00'

TO: Regional Counsels
Enforcement and Compliance Assurance Division Directors

With this memorandum, I am approving the 2023 Spill Prevention, Control and Countermeasures Expedited Settlement Agreement (“2023 SPCC ESA Program” or “ESA”). The 2023 SPCC ESA is a tool to more efficiently resolve cases that involve certain violations of the Clean Water Act (“CWA”) Section 311 program. By finalizing the 2023 SPCC ESA, we are concluding the 2019 Revised SPCC ESA Pilot Program (“2019 Pilot ESA” or “Pilot”) that was approved on September 25, 2019. The 2023 SPCC ESA Program incorporates all the changes from the Pilot and is consistent with the 2014 Revised Guidance on the Use of Expedited Settlement Agreements. The 2023 SPCC ESA Program rescinds and replaces all prior approved SPCC ESA Programs.

1. Purpose and goals

The 2023 SPCC ESA Program allows EPA to maintain a broader and more timely enforcement presence while also allowing the Agency to focus its resources on those cases that have the most significant impact on human health and the environment. The SPCC ESA program has been in existence in various forms for over twenty years. The program is based on checklists of minor violations that can be easily corrected. The 2019 Pilot was an update to the SPCC ESA last approved for some regions in 2014 and provided a program for national consistency across all regions.

2. Covered violations

Covered SPCC violations are described in the attached worksheets (Attachments A and B) based on the facility type. Versions of these checklists have been in place since the original SPCC ESA was developed in 1998 in Region 6 and were updated in 2003 and 2014 to reflect rule changes. The ESA now extends to SPCC violations at facilities subject to the Facility Response Plan (FRP) Program under 311(j). If a facility has violations that are not on the checklists, an SPCC ESA cannot be used.

3. Return to compliance timeliness

A major assumption of an ESA program is that identified violations can be corrected easily and quickly. The Agency therefore expects operators to correct violations as expeditiously as possible after being notified of a violation. Respondents are given 30 days to return a signed 2023 SPCC ESA to the Agency. By signing an ESA, a Respondent is certifying that it has returned to compliance. If a Respondent does not return the signed ESA within 30 days, it is automatically withdrawn without prejudice.

Regions have the discretion to extend the ESA offer for cause, if Respondent timely requests an extension, but generally should not grant an extension beyond 90 days after the violator's receipt of the ESA offer. This flexibility will accommodate those circumstances where weather and the ability to expeditiously hire a Professional Engineer necessitate more than 30 days to achieve compliance.

4. Repeat violators

A 2023 SPCC ESA may be offered to Repeat Violators under the conditions described below. The 2023 SPCC ESA Program is consistent with the 2014 Revised Guidance on the Use of Expedited Settlement Agreements, which lifted the prohibition on the use of ESAs to remedy violations by Repeat Violators. The 2023 SPCC ESA Program does not authorize unlimited issuance of ESAs to Repeat Violators but establishes parameters for when an ESA is appropriate.

The conditions for Repeat Violators are:

- For the purposes of the 2023 SPCC ESA Program, a Repeat Violator is an owner or operator of a facility who was previously issued a formal enforcement action, with or without penalties, for violations of the SPCC or FRP program.
- The penalty for a Repeat Violator should be assessed with up to a 75% increase in penalty, however, this increase may be waived if the violations are different from the original violations resolved through an ESA, Administrative Penalty Order (“APO”) or judicial action. The regions have discretion to determine the amount for this adjustment and should document the reasons in the case file.
- The ESA may be offered if the original enforcement action was an ESA, but no more than two ESAs may be issued to a facility.

If multiple facilities that are owned or operated by the same entity are inspected within a 120-day period (or 180 days with WED concurrence), Regions may issue an ESA to each facility without escalating the penalty for repeat violations. However, the total combined penalty for all ESAs issued to an owner/operator may not exceed the then current Class I penalty under 311(b)(B) as amended for inflation at the time of the violations.¹

¹ As of January 6, 2023, the Class I penalty maximum is \$55,808. Case teams should consult the most recent inflation adjustment rule for the current Class I penalty maximum at the time of the ESA.

5. Penalty reductions

The ESA includes a \$15,000 cap on the total penalty that can be assessed to a facility using an ESA. If the penalty calculation using the spreadsheet and facility-size multiplier is above \$15,000, the facility does not qualify for an ESA and the region should use an APO to resolve the violations.

The penalty structure is based on the SPCC ESA program approved in 1998. See Attachments A and B. The penalty structure prescribes a specific penalty amount for each violation.² This differs from the 311 Penalty Policy which is based on the total storage capacity of the facility and a determination of the cumulative effect all the violations have on the facility's ability to safely store oil.

Because the 2023 SPCC ESA can be issued to larger FRP facilities, the ESA also includes a discretionary multiplier for various size categories based on total oil storage capacity, which regions may apply in appropriate circumstances. To calculate the final ESA penalty amount, the appropriate multiplier based on the violating facility's size category is applied to the base spreadsheet ESA penalty amount. An example is provided in the SPCC ESA Penalty Multiplier. See Attachment C. This approach ensures that the final ESA penalty amount, for the same violations, is commensurate with the size of the facility. For example, a SPCC-regulated facility with less than 10,000-gallons in oil storage capacity will pay a lower final ESA penalty than a SPCC-regulated facility with over 10,000,000-gallons in oil storage capacity.

6. Model ESA documents

Attached are the violation checklists for the program and Model Settlement Order and Cover Letter. The regions may make appropriate regional modifications to the Settlement Order and Cover Letter when implementing the program. The violation checklists are Excel files, which calculate the penalty based on the identified violations. A region may not modify the penalty calculation sheet or any substantive aspects of the Pilot (e.g., deadline for responding to ESA offer) when revising these models for the region.

7. Disclaimer

Please note that this document identifies internal Agency policies and recommended procedures for EPA employees in coordinating Agency enforcement activities. This document is not a rule or regulation, and it may not apply to a particular situation based upon the circumstances. This document does not change or substitute for any law, regulation, or any other legally binding requirement and is not legally enforceable. It does not create any judicially enforceable rights or obligations substantive or procedural in any person, and may not be relied upon to create a right or a benefit, substantive or procedural, enforceable at law or in equity, by any person. EPA reserves the right to act at variance with this policy and to

² Both the ESA penalty cap and the stipulated penalty amounts in the violation checklists may be revised in the future to account for inflation and other factors as appropriate.

change it at any time without public notice.

8. Further Questions

Questions about the ESA may be directed to Kelly Brantner at brantner.kelly@epa.gov with OECA's Water Enforcement Division.

Attachments:

Attachment A- Spill Prevention and Countermeasure Inspection Findings, Alleged Violations and Proposed Penalty Form (Bulk Storage Facilities) (Excel File)

Attachment B- Spill Prevention and Countermeasure Inspection Findings, Alleged Violations and Proposed Penalty Form (Production Facilities) (Excel File)

Attachment C- SPCC ESA Discretionary Penalty Multiplier

Attachment D- SPCC ESA Model Cover Letter (Word Document)

Attachment E- SPCC ESA Model Settlement Order (Word Document)

**Spill Prevention Control and Countermeasure Inspection
Findings, Alleged Violations, and Proposed Penalty Form**

These Findings, Alleged Violations and Penalties are issued by EPA under the authority vested in the Administrator of the EPA by Section 311(b)(6)(B)(I) of the Clean Water Act, as amended by the Oil Pollution Act of 1990.

Company Name

Docket Number

Facility Name

Date

Address

Facility ID Number

City

Inspector's Name

State

Zip Code

EPA Approving Official

Contact

Enforcement Contact

Total Storage Capacity



**Summary of Findings
(Bulk Storage Facilities)**

GENERAL TOPICS: 40 C.F.R.112.3(a), (d), (e); 112.5(a), (b), (c); 112.7 (a), (b), (c), (d)

-
- Failure to have a Spill Prevention Control and Countermeasure Plan 112.3 (\$1,750)
 - Plan or sections of the hybrid plan are not certified by a professional engineer * 112.3(d) (\$500)
*Not applicable to Qualified facilities unless a hybrid (PE/QF plan) see Qualified facility 112.6 section
 - Certification lacks one or more required elements 112.3(d)(1) (\$125)
 - Plan not maintained on site (if manned at least four hrs/day) or not available for review 112.3(e)(1) (\$350)
 - No evidence of five-year review of plan by owner/operator 112.5(b) (\$100)
 - No plan amendment(s) if the facility has had a change in: design, construction, operation, or maintenance which affects the facility's discharge potential 112.5(a) (\$100)
 - Amendment(s) not certified by a professional engineer 112.5(c) (\$175)
 - No management approval of plan 112.7 (\$500)
 - Plan does not follow sequence of the rule and/or cross-reference not provided 112.7 (\$175)
 - Plan does not discuss additional procedures/methods/equipment not yet fully operational 112.7 (\$100)

- Plan does not discuss alternative environmental protection to SPCC requirements 112.7(a)(2) (\$225)
 - Plan has inadequate or no facility diagram 112.7(a)(3) (\$100) \$100
 - Inadequate or no listing of type of oil and storage capacity of containers 112.7(a)(3)(i) (\$75) \$75
 - Inadequate or no discharge prevention measures 112.7(a)(3)(ii) (\$75) \$75
 - Inadequate or no description of drainage controls 112.7(a)(3)(iii) (\$75) \$75
 - Inadequate or no description of countermeasures for discharge discovery, response and cleanup 112.7(a)(3)(iv) (\$75) \$75
 - Methods of disposal of recovered materials not in accordance with legal requirements 112.7(a)(3)(v) (\$75) \$75
 - No contact list & phone numbers for response & reporting discharges 112.7(a)(3)(vi) (\$75) \$75
 - Plan has inadequate or no information and procedures for reporting a discharge 112.7(a)(4) (\$125)
 - Plan has inadequate or no description and procedures to use when a discharge may occur 112.7(a)(5) (\$175)
 - Inadequate or no prediction of equipment failure which could result in discharges 112.7(b) (\$175)
 - Plan does not discuss and facility does not implement appropriate containment/diversionary structures/ equipment 112.7 (\$450)
 - Inadequate containment or drainage for Loading Area- 112.7(c) (\$450)
 - Plan has no or inadequate discussion of any applicable more stringent State rules, regulations, and guidelines- 112.7(j) (\$100)
 - Plan does not include a signed copy of the Certification of Applicability of the Substantial Harm Criteria per 40 CFR Part 112.20(e) (\$175)
- If claiming impracticability of containment and appropriate diversionary structures:**
- Impracticability has not been clearly denoted and demonstrated in plan 112.7(d) (\$125)
 - No periodic integrity and leak testing 112.7(d) (\$175)
 - No contingency plan 112.7(d)(1) (\$175)
 - No written commitment of manpower, equipment, and materials 112.7(d)(2) (\$175)
 - No periodic integrity and leak testing , if impracticability is claimed 112.7(d) (\$175)
 - Plan has no or inadequate discussion of general requirements not already specified 112.7(j) (\$100)

QUALIFIED FACILITY REQUIREMENTS: 40 C.F.R. 112.6

- Qualified Facility: No Self certification 112.6(a) (\$500)
- Qualified Facility: Self certification lacks required elements 112.6(a) (\$125)
- Qualified Facility: Technical amendments not certified 112.6(b) (\$175)
- Qualified Facility: Qualified Facility Plan includes alternative measures not certified by liscensed Professional Engineer 112.6(b) \$175
- Qualified Facility: Environmental Equivalence or Impracticability not certified by PE 112.6(b)(4) (\$400)

WRITTEN PROCEDURES AND INSPECTION RECORDS: 40 C.F.R. 112.7(e)

- Plan does not include inspections and test procedures in accordance with 40 CFR Part 112 112.7(e) (\$100)
- Inspections and tests required are not in accordance with written procedures developed for the facility 112.7(e) (\$100)
- No Inspection records were available for review 112.7(e) (\$225)

(Written procedures and/or a record of inspections and/or customary business records)
- Inspection records are not signed by appropriate supervisor or inspector 112.7(e) (\$100)
- Inspection records are not maintained for three years 112.7(e) (\$100)

PERSONNEL TRAINING AND DISCHARGE PREVENTION PROCEDURES: 40 C.F.R. 112.7(f)

- No training on the operation and maintenance of equipment to prevent discharges and/or facility operations 112.7(f)(1) (\$100)
- No training on discharge procedure protocols 112.7(f)(1) (\$100)
- No training on the applicable pollution control laws, rules and regulations, and/or SPCC plan 112.7(f)(1) (\$100)
- No designated person accountable for spill prevention 112.7(f)(2) (\$100)
- Spill prevention briefings are not scheduled and conducted at least once a year 112.7(f)(3) (\$100)
- Plan has inadequate or no discussion of personnel and spill prevention procedures 112.7(a)(1) (\$100)

SECURITY (excluding Production Facilities): 40 C.F.R. 112.7(g)

- Plan does not describe how the facility secures and controls access to the oil handling, processing and storage areas 112.7(g)(1) (\$175)
- Master flow and drain valves not secured 112.7(g)(2) (\$350)
- Starter controls on pumps not secured to prevent unauthorized access- 112.7(g) (\$100)
- Out-of-service and loading/unloading connection(s) of piping/pipelines not adequately secured 112.7(g)(4) (\$100)
- Plan does not address the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges 112.7(g) (\$175)

FACILITY TANK CAR AND TANK TRUCK LOADING/UNLOADING: 40 C.F.R. 112.7(c) and/or (h-j)

- Inadequate secondary containment, and/or rack drainage does not flow to catchment basin treatment system, or quick drainage system 112.7(h)(1) (\$850)
- Containment system does not hold at least the maximum capacity of the largest single compartment of any tank car or tank truck 112.7(h)(1) (\$525)
- There are no interlocked warning lights, or physical barrier system, or warning signs, or vehicle brake interlock system to prevent vehicular departure before complete disconnect from transfer lines- 112.7(h)(2) (\$350)
- There is no inspection of lowermost drains and all outlets prior to filling and departure of any tank car or tank truck- 112.7(h)(3) (\$175)

- Plan has inadequate or no discussion of facility tank car and tank truck loading/unloading rack 112.7(a)(1) (\$100)

QUALIFIED OIL OPERATIONAL EQUIPMENT: 40 C.F.R. 112.7(k)

- Failure to establish and document procedures for inspections or a monitoring program to detect equipment failure and/or a discharge 112.7(k)(2)(i) (\$175)
- Failure to provide an oil spill contingency plan 112.7(k)(2)(ii)(A) (\$175)
- No written commitment of manpower, equipment, and materials 112.7(k)(2)(ii)(B) (\$175)

FACILITY DRAINAGE: 40 C.F.R 112.8(b) & (c) and/or 112.12(b) & (c)

- Secondary Containment circumvented due to containment bypass valves left open and/or pumps and ejectors not manually activated to prevent a discharge 112.8(b)(1)and(2), and 112.8(c)(3)(i) (\$700)
- Dike water is not inspected prior to discharge and/or valves not open & resealed under responsible supervision 112.8(c)(3)(ii)and(iii) (\$525)
- Adequate records (or NPDES permit records) of drainage from diked areas not maintained 112.8(c)(3)(iv) (\$100)
- Drainage from undiked areas do not flow into catchment basins ponds or lagoons, or no diversion system to retain or return a discharge to the facility 112.8(b)(3)and(4) (\$525)
- Two “lift” pumps are not provided for more that one treatment unit 112.8(b)(5) (\$75)
- Plan has inadequate or no discussion of facility drainage 112.7(a)(1) (\$100)

BULK STORAGE CONTAINERS: 40 C.F.R. 112.7(i), 112.8(c) and/or 112.12(c)

- Failure to conduct evaluation of field-constructed aboveground containers for risk of discharge or failure due to brittle fracture or other catastrophe 112.7(i) \$350
- Material and construction of containers not compatible to the oil stored and the conditions of storage such as pressure and temperature 112.8(c)(1) (\$525)
- Secondary containment is inadequate 112.8(c)(2) (\$850)
- Secondary containment systems are not sufficiently impervious to contain oil 112.8(c)(2) (\$425)
- Completely buried tanks installed after August 16, 2002 are not protected from corrosion or are not subjected to regular pressure testing 112.8(c)(4) (\$175)
- Buried sections of partially burried metallic tans are not prootected from corrosion 112.8(c)(5) (\$175)
- Aboveground tanks are not subject to visual inspections 112.8(c)(6) (\$525)
- Aboveground tanks are not subject to periodic integrity testing techniques such as visual inspections hydrostatic testing, or other nondestructive methods 112.8(c)(6) (\$525)
- Records of inspections (or customary business records) do not include inspections of container supports/ foundation, signes of container deterioration, discharges and/or accumulations of oil inside diked areas 112.8(c)(7) (\$175)
- Steam return/exhaust of internal heating coils which discharge into an open water course are not monitored, passed through a settling tank, skimmer or other separation system 112.8(c)(7) (\$175)
- Container installations are not engineered or updated in accordance with good engineering practice because none of the following are present: 112.8(c)(8) (\$525)
 - high liquid level alarm with audible or visual signal, or audible air vent 112.8(c)(8)(i)

- high liquid level pump cutoff devices set to stop flow at a predetermined level 112.8(c)(8)(ii)
- direct audible or code signal communication between container gauger and pumping station 112.8(c)(8)(iii)
- fast response system for determining liquid level of each bulk storage container, or direct vision gauges with a person present to monitor gauges and the overall filling of bulk storage containers 112.8(c)(8)(iv)

- No testing of liquid level sensing devices to ensure proper operation 112.8(c)(8)(v) (\$100) \$100
- Effluent treatment facilities not observed frequently to detect possible system upsets that could cause a discharge as described in §112.1(b)- 112.8(c)(9) (\$175)
- Causes of leaks resulting in accumulations of oil in diked areas are not promptly corrected 112.8(c)(10) (\$525)
- Mobile or portable storage containers are not positioned or located to prevent discharged oil from reaching navigable water or have inadequate secondary containment 112.8(c)(11) (\$175)
- Secondary containment inadequate for mobile or portable storage tanks 112.8(c)(11) (\$600)
- Plan has inadequate or no discussion of bulk storage tanks 112.7(a)(1) (\$100)

FACILITY TRANSFER OPERATIONS, PUMPING, AND FACILITY PROCESS: 40 C.F.R. 112.8(d) and 112.12(d)

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- Buried piping is not corrosion protected with protective wrapping, coating or cathodic protection protection 112.8(d)(1) (\$175)
 - Corrective action is not taken on exposed sections of buried piping when deterioration is found 112.8(d)(1) (\$525)
 - Not-in-service or standby piping is not capped or blank-flanged and marked as to origin 112.8(d)(2) (\$100)
 - Pipe supports are not properly designed to minimize abrasion and corrosion, and allow for expansion and contraction 112.8(d)(3) (\$100)
 - Aboveground valves, piping and appurtenances are not inspected regularly 112.8(d)(4) (\$350) \$350
 - Periodic integrity and leak testing of buried piping is not conducted at time of installation, modification, construction, relocation, or replacement 112.8(d)(4) (\$175)
 - Vehicle traffic is not warned of aboveground piping or other oil transfer operations 112.8(d)(5) (\$175)
 - Plan has inadequate or no discussion of facility transfer operations, pumping, and facility process 112.7(a)(1) (\$100)

SUB TOTAL	\$1,000
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Multiplier	Total	\$0
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**Spill Prevention Control and Countermeasure Inspection
Findings, Alleged Violations, and Proposed Penalty Form**

These Findings, Alleged Violations and Penalties are issued by EPA under the authority vested in the Administrator of the EPA by Section 311(b)(6)(B)(I) of the Clean Water Act, as amended by the Oil Pollution Act of 1990.

Company Name		Docket Number
<input type="text"/>		<input type="text"/>
Facility Name		Date
<input type="text"/>		<input type="text"/>
Address		Facility ID Number
<input type="text"/>		<input type="text"/>
City		Inspector's Name
<input type="text"/>		<input type="text"/>
State	Zip Code	EPA Approving Official
<input type="text"/>	<input type="text"/>	<input type="text"/>
Contact		Enforcement Contact
<input type="text"/>		<input type="text"/>
Total Storage Capacity		
<input type="text"/>		



**Summary of Findings
(Production Facilities)**

GENERAL TOPICS: 40 C.F.R 112.3(a), (d), (e); 112.5(a), (b), (c); 112.7 (a), (b), (c), (d)

-
- Failure to have or implement a Spill Prevention Control and Countermeasure Plan 112.3 (\$1,750)
 - Plan or sections of the hybrid plan are not certified by a professional engineer 112.3(d) (\$500)
 - Certification lacks one or more required elements 112.3(d)(1) (\$125)
 - Plan not maintained on site (if manned at least four hrs/day) or not available for review 112.3(e)(1) (\$350)
 - No evidence of five-year review of plan by owner/operator 112.5(b) (\$100)
 - No plan amendment(s) if the facility has had a change in: design, construction, operation, or maintenance which affects the facility's discharge potential 112.5(a) (\$100)
 - Amendment(s) not certified by a professional engineer 112.5(c) (\$175)
 - No management approval of plan 112.7 (\$500)
 - Plan does not follow sequence of the rule and/or cross-reference not provided 112.7 (\$175)
 - Plan does not discuss additional procedures/methods/equipment not yet fully operational 112.7 (\$100)

- Plan does not discuss alternative environmental protection to SPCC requirements 112.7(a)(2) (\$225)
- Plan has inadequate or no facility diagram 112.7(a)(3) (\$100)
- Inadequate or no listing of type of oil and storage capacity layout of containers 112.7(a)(3)(i) (\$75)
- Inadequate or no discharge prevention measures 112.7(a)(3)(ii) (\$75)
- Inadequate or no description of drainage controls 112.7(a)(3)(iii) (\$75)
- Inadequate or no description of countermeasures for discharge discovery, response and cleanup 112.7(a)(3)(iv) (\$75)
- Recovered materials not disposed of in accordance with legal requirements 112.7(a)(3)(v) (\$75)
- No contact list & phone numbers for response & reporting discharges 112.7(a)(3)(vi) (\$75)
- Plan has inadequate or no information and procedures for reporting a discharge 112.7(a)(4) (\$125)
- Plan has inadequate or no description and procedures to use when a discharge may occur 112.7(a)(5) (\$175)
- Inadequate or no prediction of equipment failure which could result in discharges 112.7(b) (\$175)
- Plan does not discuss and facility does not implement appropriate containment/diversionary structures/equipment 112.7 (\$450)
- Inadequate containment or drainage for Loading Area- 112.7(c) (\$450) \$450
- If claiming impracticability of containment and appropriate diversionary structures:**
- Impracticability has not been clearly denoted and demonstrated in plan 112.7(d) (\$125) \$125
- No contingency plan 112.7(d)(1) (\$175)
- No written commitment of manpower, equipment, and materials 112.7(d)(2) (\$175)
- No periodic integrity and leak testing 112.7(d) (\$175)
- Plan has no or inadequate discussion of general requirements not already specified 112.7(j) (\$100)
- Plan does not include a signed copy of the Certification of the Applicability of the Substantial Harm Criteria per 40 CFR Part 112.20(e) (\$175)

QUALIFIED FACILITY REQUIREMENTS: 40 C.F.R. 112.6

- Qualified Facility: No Self certification 112.6(a) (\$500)
- Qualified Facility: Self certification lacks required elements 112.6(a) (\$125)
- Qualified Facility: Technical amendments not certified 112.6(b) (\$175)
- Qualified Facility: Qualified Facility Plan includes alternative measures not certified by licensed Professional Engineer 112.6(b) \$175
- Qualified Facility: Environmental Equivalence or Impracticability not certified by PE 112.6(d) (\$400)

WRITTEN PROCEDURES AND INSPECTION RECORDS: 40 C.F.R. 112.7(e)

- Plan does not include inspections and test procedures in accordance with 40 CFR Part 112.7(e) (\$100)
- Inspections and tests required are not in accordance with written procedures developed for the facility 112.7(e) (\$100)
- The plan has inadequate or no discussion of written procedures for inspection records 112.7(a)(1) (\$100)
- No Inspection records were available for review 112.7(e) (\$225)
(Written procedures and/or a record of inspections and/or customary business records)
- Inspection records are not signed by appropriate supervisor or inspector 112.7(e) (\$100)
- Inspection records are not maintained for three years 112.7(e) (\$100)

PERSONNEL TRAINING AND DISCHARGE PREVENTION PROCEDURES 112.7(f)

- No training on the operation and maintenance of equipment to prevent discharges and/or facility operations 112.7(f)(1) (\$100)
- No training on discharge procedure protocols 112.7(f)(1) (\$100)
- No training on the applicable pollution control laws, rules and regulations, and/or SPCC plan 112.7(f)(1) (\$100)
- No designated person accountable for spill prevention 112.7(f)(2) (\$100)
- Spill prevention briefings are not scheduled and conducted at least once per year per 112.7(f)(3) (\$100)
- Plan has inadequate or no discussion of personnel and spill prevention procedures 112.7(a)(1) (\$100)

FACILITY TANK CAR AND TANK TRUCK LOADING/UNLOADING: 40 C.F.R. 112.7(c) and/or (h-j)

- Inadequate secondary containment, and/or rack drainage does not flow to catchment basin treatment system, or quick drainage system 112.7(h)(1) (\$850)
- Containment system does not hold at least the maximum capacity of the largest single compartment of any tank car or tank truck 112.7(h)(1) (\$525)
- There are no interlocked warning lights, or physical barrier system, or warning signs, or vehicle brake interlock system to prevent vehicular departure before complete disconnect from transfer lines- 112.7(h)(2) (\$350)
- There is no inspection of lowermost drains and all outlets prior to filling and departure of any tank car or tank truck- 112.7(h)(3) (\$175)
- Plan has inadequate or no discussion of facility tank car and tank truck loading/unloading rack 112.7(a)(1) (\$100)

QUALIFIED OIL OPERATIONAL EQUIPMENT: 40 C.F.R. 112.7(k)

- Failure to establish and document procedures for inspections or a monitoring program to detect equipment failure and/or a discharge 112.7(k)(2)(i) (\$175)
- Failure to provide an oil spill contingency plan 112.7(k)(2)(ii)(A) (\$175)
- No written commitment of manpower, equipment, and materials 112.7(k)(2)(ii)(B) (\$175)

OIL PRODUCTION FACILITY DRAINAGE: 40 C.F.R. 112.9(b)

- Drains for the secondary containment systems at tank batteries **and** separation **and** central treating areas are not closed and sealed at all times except when uncontaminated rainwater is being drained 112.9(b)(1) (\$700)
- Prior to the drainage of diked areas, rainwater is not inspected, valves opened and resealed under responsible supervision and records kept of such events 112.9(b)(1) (\$525)
- Accumulated oil on the rainwater is not removed and returned to storage or disposed of in accordance with legally approved methods 112.9(b)(1) (\$350)
- Field drainage system (e.g. drainage ditches and road ditches), oil traps, sumps, and/or skimmers are not regularly inspected and/or oil is not promptly removed 112.9(b)(2) (\$350)
- Inadequate or no records maintained for drainage events 112.9 (\$100)
- Plan has inadequate or no discussion of facility drainage 112.9 (\$100)

BULK STORAGE CONTAINERS: 40 C.F.R. 112.7(i) and 112.9(c)

- Plan has inadequate or no risk analysis and/or evaluation of field-constructed aboveground tanks for brittle fracture 112.7(i) (\$100)
- Failure to conduct evaluation of field-constructed aboveground tanks for brittle fracture 112.7(i) (\$350)
- Container material and construction of tanks not compatible to the oil stored and the conditions of storage such as pressure and temperature 112.9(c)(1) (\$525)
- Size of secondary containment appears to be inadequate for containers and treating facilities 112.9(c)(2) (\$850)
- Drainage from undiked areas are not safely confined in a catchment basin or holding pond 112.9(c)(2) (\$450) \$450
- Secondary containment materials are not sufficiently impervious to contain oil 112.9(c)(2) (\$425) \$425
- Excessive vegetation which affects the integrity 112.9(c)(2) (\$175) \$175
- Walls of containment system slightly eroded or have low areas which impact the containment sizing/ capacity requirements 112.9(c)(2) (\$350) \$350
- Visual inspections of containers, foundation and supports are not conducted periodically for deterioration and maintenance needs 112.9(c)(3) (\$525) \$525
- Tank battery installations are not in accordance with good engineering practice because none of the following are present 112.9(c)(4) (\$525)
 - (1) Adequate tank capacity to prevent tank overflow 112.9(c)(4)(i), or
 - (2) Overflow equalizing lines between the tanks 112.9(c)(4)(ii), or
 - (3) Vacuum protection to prevent tank collapse 112.9(c)(4)(ii), or
 - (4) High level alarms to generate and transmit and alarm signal where facilities are part of a computer control system- 112.9(c)(4)(iv).
- Plan has inadequate or no discussion of bulk storage tanks- 112.7(a)(1) (\$100)

FACILITY TRANSFER OPERATIONS, PUMPING, AND FACILITY PROCESS: 40 C.F.R. 112.9(d) and 112.7

- Aboveground valves, piping and appurtenances are not inspected periodically on a scheduled basis for general condition (including items such as: flange joints, valve glands 2nd bodies, drip pans, pipeline supports, bleeder and gauge valves, polish rods/stuffing box).- 112.9(d)(1) (\$525)

- Brine and saltwater disposal facilities are not examined often- 112.9(d)(2) (\$525)

- Inadequate or no flowline maintenance program (includes: examination, corrosion protection, flowline replacement)- 112.9(d)(3) (\$525)

- Plan has inadequate or no discussion of oil production facilities- 112.7(a)(1) (\$100)

- Flowlines with no secondary containment need a contingency plan and written commitment of resources 112.9(d)(3) (\$300)

- Facility does not have a written flowline maintenance program or it fails to meet or implement the requirements of 112.9(d)(4) \$300 \$300

SUB TOTAL	\$2,800
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Multiplier

Total	\$0
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

EXPEDITED SETTLEMENT PENALTY MATRIX

MULTIPLIER FACTORS FOR CALCULATING PROPOSED PENALTIES FOR
VIOLATIONS FOUND DURING SPCC INSPECTIONS

Quantity Multiplier Table

Total Oil Storage Capacity (gallons)*	Quantity Multiplier
1,320 – 10,000	0.75
10,001 – 41,999	1.0
42,000 – 999,999	1.25
1,000,000 – 9,999,999	1.75
>10,000,000	2.0

* Total Oil Storage Capacity includes all containers regulated by 40 CFR part 112.

PROPOSED PENALTY WORKSHEET

Adjusted Penalty = Unadjusted Penalty X Quantity Multiplier

The Unadjusted Penalty is calculated by adding up all the penalties listed on the Spill Prevention Control and Countermeasure Inspection Findings, Alleged Violations, and Proposed Penalty Form.

The Quantity Multiplier is based on the total oil storage capacity of a SPCC-regulated facility with violations that meet Expedited Settlement Agreement criteria.

The Adjusted Penalty is the amount of the non-negotiable penalty that is calculated by multiplying the Unadjusted Penalty by the Quantity Multiplier.

Example:

The ABC Bulk Storage Terminal has a total oil storage capacity of 200,000 gallons in its SPCC-regulated containers. Based on this oil storage capacity, the appropriate Quantity Multiplier is 1.25. After adding the penalty numbers in the Spill Prevention Control and Countermeasure Inspection Findings, Alleged Violations, and Proposed Penalty Form, the Unadjusted Penalty is \$4,500.

Calculation of Adjusted Penalty

1st Reference the Quantity Multiplier Table for calculating the Unadjusted Penalty. ABC Bulk Storage Terminal's total oil storage capacity of 200,000 gallons, based on the 42,000 – 999,999-gallon total oil storage capacity range, corresponds to a Quantity Multiplier of 1.25.

2nd Use the Adjusted Penalty formula

$$\begin{aligned}\text{Adjusted Penalty} &= \$4,500 \text{ (Unadjusted Penalty)} \times 1.25 \text{ (Quantity Multiplier)} \\ \text{Adjusted Penalty} &= \$5,625\end{aligned}$$

3rd An Adjusted Penalty of \$5,625 would be assessed to the ABC Bulk Storage Terminal for violations found during the SPCC Inspection. The Expedited Settlement Agreement (ESA) will reflect the Adjusted Penalty amount.

Attachment D- Model Cover Letter

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Name
Company
Address

Re: Expedited Settlement Offer for Violations of Spill Prevention Control and Countermeasure Regulations at **FACILITY**

Dear:

On **[insert date]**, Region **[insert]** of the U.S. Environmental Protection Agency conducted an inspection of **[insert details or relevant site and define as Site if using that term later in the letter – include name of owner/operator, defining it as the Company, if appropriate]**. The purpose of the inspection was to evaluate **[your/ Company’s]** compliance with the Oil Pollution Prevention regulations promulgated at 40 CFR Part 112 under Section 311(j) of the Clean Water Act, as amended, (33 U.S.C. §1321(j), (the “Act” or “CWA”) (commonly known as the Spill Prevention Control and Countermeasure or “SPCC” regulations). A copy of the EPA’s inspection report is enclosed.

The inspection revealed instances in which **[you / the Company]** appeared not to have complied with the SPCC requirements. The apparent violations are outlined in the enclosed SPCC Inspection Findings, Alleged Violations, and Proposed Penalty Form (“Violations Form”).

The EPA has authority under section 311(j) of the Act to take enforcement actions, including seeking civil penalties, for the alleged violations outlined in the Violations Form. At this time, rather than undertake a more traditional enforcement action for civil penalties, the EPA is offering **[you / the Company]** the opportunity to enter into the enclosed Expedited Settlement Agreement (ESA), provided **[you / the Company]** (1) correct[s] the deficiencies cited in the inspection report and in the Violations Form and (2) agree to pay an administrative civil penalty of **[\$insert]**.

It is important for all deficiencies identified in the Violations Form and inspection report to be corrected promptly. Before the EPA agrees to enter into the ESA, you will need to submit evidence, including

photographs, demonstrating all such deficiencies have been corrected. Please note that by signing the ESA, **[you / the Company]** will certify all violations alleged in the Violations Form have been corrected.

If you intend to enter into this ESA, please sign and return it, together with documentation of the deficiencies having been corrected, within 30 days of your receipt of this letter to:

[insert name and contact information for EPA person]

Although the ESA will commit **[you / the Company]** to pay a civil administrative penalty, you do **not** need to make that payment at the time you return the signed ESA to the EPA. After the EPA representative signs the ESA, we will then ask the Regional Judicial Officer to issue a Final Order approving the ESA. You will then be notified of the issuance of the Final Order, and your penalty will be due 10 days after the Final Order is signed. The mechanics for payment are set forth in the Expedited Settlement Agreement Payment Instructions accompanying the ESA.

Entering into the enclosed ESA and paying the penalty will resolve **[your / the Company's]** liability for federal civil penalties for the violations alleged in the Violations Form. In other words, for all violations alleged in the Violations Form there will be no additional civil penalties. As with any settlement of administrative civil penalties, regardless of whether you enter into the ESA, the EPA reserves its rights to issue an administrative compliance order, to seek a court injunction directing compliance, and/or to pursue criminal sanctions, in the event any such actions are appropriate.

This offer is open for a period of 30 days from your receipt of this letter. EPA may, at its discretion, grant up to a 90 day extension for you to come into compliance with the SPCC requirements but only if you demonstrate that it is technically infeasible or impracticable to achieve compliance within 30 days. You must submit a request for an extension to the **NAME/Title** at the above address within 14 days of your receipt of this letter. If EPA grants the extension request, you will receive an approval letter. You must correct the violations within the approved time frame. If you do not return the signed ESA and documentation of corrective action within the allotted time, this offer will be automatically withdrawn, and the EPA may pursue a more formal enforcement action for penalties. This could involve a longer process and result in a greater penalty. Under the Clean Water Act, the EPA is authorized to seek civil penalties of up to \$20,719 **[update as appropriate for inflation]** per day of violation. 33 U.S.C. §1321(b)(6). In addition, the EPA may take further enforcement action if you sign the ESA but do not pay the penalty.

The EPA encourages expeditious settlements and is committed to settling this matter fairly and expeditiously. If you have any questions or comments, such as how to document corrective actions, please contact **[EPA Contact]**, at **[insert phone number and/or email address]**. If **[you are/ the Company is]** represented by an attorney in this matter who has questions, please ask the attorney to contact **[insert name and contact information for EPA attorney]**.

We look forward to hearing from you.

Sincerely,

Delegated Official

Enclosures:

SPCC Inspection Findings and Violations Form
Expedited Settlement Agreement
Payment Instructions



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION #, Address

EXPEDITED SPILL PREVENTION CONTROL AND COUNTERMEASURE
SETTLEMENT AGREEMENT

In the matter of [NAME OF COMPANY]
Docket No. CWA-

On [date], an authorized representative of the United States Environmental Protection Agency (EPA) conducted an inspection of Respondent's facility known as [facility name] at [street address] in [city], [state] to determine compliance with the Oil Pollution Prevention regulations promulgated at 40 CFR Part 112 under Section 311(j) of the Clean Water Act, as amended, (33 U.S.C. §1321(j)), (the "Act" or "CWA"). EPA determined that Respondent, as owner or operator of the facility, violated regulations implementing Section 311(j) of the Act by failing to comply with the Oil Pollution Prevention regulations as noted on the attached Spill Prevention Control and Countermeasure Plan ("SPCC") Inspection Findings, Alleged Violations, and Proposed Penalty Form ("Violations Form") which is hereby incorporated by reference. By its signature below, EPA ratifies the inspection findings and alleged violations set forth in the Violations Form.

The parties enter into this Expedited Settlement in order to settle the civil violations described in the Violations Form for a penalty of \$X,000. The parties are authorized to enter into this Expedited Settlement under the authority of Section 311(b) (6) (B) (i) of the Act, 33 U.S.C. § 1321(b) (6) (B) (i), and by 40 C.F.R. § 22.13(b).

This settlement is subject to the following terms and conditions:

EPA finds the Respondent is subject to the Oil Pollution Prevention regulations, and has violated the regulations as further described in the Violations Form. Respondent admits it is subject to the Oil Pollution Prevention regulations and that EPA has jurisdiction over Respondent and Respondent's conduct as described in the Violations Form. Respondent admits to the facts in the first paragraph of this Settlement Agreement, and waives any objections it may have to EPA's jurisdiction. Respondent consents to the assessment of the penalty stated above.

Respondent further certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the violations identified in the Violations Form have been corrected and the facility is

now in full compliance with the Oil Pollution Prevention regulations (or that the violations will be corrected and the facility brought into full compliance with the Oil Pollution Prevention regulations within an alternative time frame agreed to by EPA in writing). Respondent, in accordance with the attached Payment Instructions, has provided payment of the civil penalty.

The payment made pursuant to this Consent Agreement is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. §162(f), and, therefore, Respondent shall not claim it as a tax deductible expenditure for purposes of federal, state or local law.

Upon signing and returning this Expedited Settlement to EPA, Respondent waives the opportunity for a hearing or appeal pursuant to Section 311 of the Act, and consents to EPA's approval of the Expedited Settlement without further notice. Moreover, in entering into this Consent Agreement, the Respondent agrees to bear its own costs and attorney's fees related to this Consent Agreement.

This Expedited Settlement is binding on the parties signing below and is effective upon filing with the Regional Hearing Clerk pursuant to 40 C.F.R. § 22.31(b). The parties consent to service of this Expedited Settlement Agreement and Final Order by e-mail at the following valid e-mail addresses: [insert ORC attorney's e-mail address] (for Complainant), and _____ (for Respondent).

Once the Expedited Settlement is signed by the Regional Judicial Officer, the original Expedited Settlement will be filed with the Regional Hearing Clerk and a copy will be mailed to: U.S. EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive (MS-WG32B), Cincinnati, OH 45268. A copy of the Expedited Settlement will also be mailed to the Respondent.

If Respondent does not sign and return this Expedited Settlement as presented within 30 days of the date of its receipt, or within an extension timeframe approved by the EPA, the proposed Expedited Settlement is withdrawn without prejudice to EPA's ability to file any other enforcement action for the violations identified in the Violations Form.

After this Expedited Settlement becomes effective, EPA will take no further civil penalty action against Respondent for the alleged violations of the Oil Pollution Prevention regulations described in the Violations Form through the order date of this

SPCC ESA Model Order

Expedited Agreement. However, EPA does not waive any rights to take any enforcement action for any other past, present, or future violations by Respondent of the Oil Pollution Prevention regulations or of any other federal statute or regulations.

APPROVED BY EPA:

_____ Date: _____
Delegated Official

APPROVED BY RESPONDENT:

Name (print): _____

Title (print): _____

Signature: _____ Date: _____

IT IS SO ORDERED:

_____ Date: _____

Regional Judicial Officer