



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

SEP 25 2019

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Revised Spill Prevention Control and Countermeasures Expedited Settlement Agreement Pilot

FROM: Rosemarie Kelley, Director
Office of Civil Enforcement

A handwritten signature in blue ink that reads "Rosemarie Kelley".

TO: Regional Counsels
Enforcement and Compliance Assurance Division Directors

This memorandum transmits the Spill Prevention Control and Countermeasures (SPCC) Expedited Settlement Agreement (ESA) Pilot for immediate use. The Pilot is a revision to the SPCC ESA Program initially approved for use by all regions in 2003. The Office of Civil Enforcement, in coordination with a workgroup of Oil Pollution Act enforcement practitioners developed this ESA Pilot. This Pilot makes a number of changes to the current SPCC ESA Program, including changes to the penalty checklist to account for inflation since the last update and expanding the universe of facilities eligible to receive an ESA. These documents supersede all previously approved SPCC ESA documents.

The most significant change is that this revised SPCC ESA Pilot can now be offered to facilities subject to the Facility Response Plan (FRP) Program under Clean Water Act Section 311(j) for easily correctable SPCC violations that do not cause significant health or environmental harm. The Storage Capacity Multiplier in the ESA checklist should be used for these facilities. 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.

The 2014 Revised Guidance on the Use of Expedited Settlement Agreements revised the Office of Enforcement and Compliance Assurance's ESA policy to allow ESAs to be offered to repeat violators. We have now incorporated that change into this ESA Pilot. A repeat violator is a violator who, in the past five years, has had the same or closely-related violation(s) that were subject of an enforcement action at the facility, or at other facilities under the ownership, operation, or control of the violator. The penalty for the violations by 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 enforcement action. The ESA may be offered if the original enforcement action was an ESA, such that no more than two ESAs can be issued to a facility for the same or closely related violations.

Additionally, if multiple facilities owned by the same owner/operator are inspected within a six-month time frame, the owner/operator would not be considered a repeat violator. Instead each facility would be eligible for an ESA such that the issuance of an ESA to one facility would not exclude eligibility for others or increase the penalty. However, the total combined penalty for all ESAs issued to an owner/operator may not exceed \$47,357 or the current Class I penalty under §311(b)(B) as amended for inflation.

The revision also recognizes that the region should take into consideration the timeframe necessary to come into compliance when offering the ESA. The revised ESA allows for an extension of up to 90 days upon written agreement with the facility.

In light of these changes, the penalty cap for each ESA has been adjusted to \$15,000. 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 Administrative Penalty Order to resolve the violations.

Attached are the model documents for the Pilot. The violation checklists are Excel files, which calculate the penalty based on the identified violations. There are two versions of the Order and letters because the 2014 Guidance allows for penalties to either be collected at the time the facility accepts the ESA or once the Regional Judicial Officer finalizes the Order. The model documents include each of these options. These documents will be piloted for 18 months, and we will begin to evaluate the program once we have one year of data.

Please contact Kelly Brantner of my staff (Brantner.kelly@epa.gov, 202-564-9933) if you have any questions.

Attachments:

- Attachment A- Cover Letter 1 (payment after final order) (Word Document)
- Attachment B- Cover Letter 2 (payment with agreement) (Word Document)
- Attachment C- SPCC ESA Model Order 1 (Word Document)
- Attachment D- SPCC ESA Model Order 2 (Word Document)
- Attachment E- Spill Prevention and Countermeasure Inspection Findings, Alleged Violations and Proposed Penalty Form (Bulk Storage Facilities) (Excel File)
- Attachment F- Spill Prevention and Countermeasure Inspection Findings, Alleged Violations and Proposed Penalty Form (Production Facilities) (Excel File)
- Attachment G- SPCC ESA Pilot Summary

Attachment A- Cover Letter 1 (payment after final order)

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(b) 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 \$18,943 **[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

Attachment B- Cover Letter 2 (payment with agreement)

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 **DATE**, the U.S. Environmental Protection Agency ("EPA") inspected the above-named facility and found violations of the federal Oil Pollution Prevention regulations at 40 C.F.R. Part 112 (commonly known as the Spill Prevention Control and Countermeasure or "SPCC" regulations). The specific allegations of violation are listed on the enclosed SPCC Inspection Findings, Alleged Violations, and Proposed Penalty Form (hereinafter referred to as the "Violations Form").

The SPCC regulations are issued under Section 311(j) of the Clean Water Act, 33 U.S.C. §1321(j), and are designed to prevent oil spills to surface waters or their adjoining shorelines. To accomplish this goal, the regulations require certain facilities, such as yours, to prepare and implement SPCC plans. The Clean Water Act also provides EPA with authority to, among other things, seek administrative civil penalties for violations of the SPCC regulation requirements of up to \$18,943 per day, up to a maximum of \$236,783. **[update as appropriate for inflation]**

It is the policy of EPA to encourage the expedited settlement of easily verifiable and correctable violations of the SPCC regulations, such as those identified in the enclosed Violations Form. You may therefore choose to resolve the violations identified on this form quickly, without protracted litigation, by correcting the violations, signing the enclosed Expedited SPCC Settlement Agreement (hereinafter referred to as the "Settlement Agreement"), and returning it to EPA with payment for the reduced quick settlement penalty of **SXX,000**. The Settlement Agreement is issued in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation, Termination or Suspension of Permits" at 40 C.F.R. Part 22, a copy of which is enclosed.

In order to avail yourself of the Expedited Settlement option, you must take the following steps within 30 days of your receipt of this letter:

1. Agree to correct all the violations identified in the enclosed Violations Form within 30 days of your receipt of this letter (or an alternative time frame approved by EPA in writing as provided below);
2. Send a certified penalty payment check for \$XX,000 to the address listed directly below. The penalty payment must be in the form of a certified check payable to the U.S. Environmental Protection Agency. On the check please include the case docket number (located at the top of the Settlement Agreement) and the phrase "Oil Spill Liability Trust Fund – 311."

U.S. EPA
P.O. Box 979077
St. Louis, MO 63197-9000

3. Sign and return the original Settlement Agreement along with a copy of the certified penalty payment check, by certified mail to:

Name
Title
U.S. Environmental Protection Agency - Region
Address
City, State ZIP

4. Submit a copy of the certification and signature page of your newly prepared SPCC plan to the EPA contact at the address in paragraph 3.

Upon EPA's receipt of the signed Settlement Agreement, it will be forwarded to the EPA Regional Judicial Officer for approval. After the Regional Judicial Officer approves and signs the Settlement Agreement, the Final Order will be filed with the Regional Hearing Clerk and a copy will be sent to you. You should retain a copy of both the Settlement Agreement and the penalty payment.

Please be aware that by signing the Settlement Agreement, you waive your opportunity for a formal hearing pursuant to Section 311 of the Clean Water Act, 33 USC 1321(b)(6)(A)(i), as well as the right to appeal the order ratifying the agreement and agree to be bound by the Settlement Agreement's terms.

If you do not return a signed Settlement Agreement and pay the penalty within 30 days of your receipt of this letter, the Settlement Agreement will be automatically withdrawn without prejudice to EPA's ability to file an enforcement action for the cited violations. If you decide not to sign and return the Settlement Agreement and pay the penalty, EPA can pursue more formal enforcement measures to correct the violation(s), including seeking administrative civil penalties as referenced above.

As noted, as a condition of settlement you must correct the cited violations within 30 days of 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.

Please be aware that, regardless of whether you sign and return the enclosed Settlement Agreement and pay the penalty within the designated time frame, you are still obligated to comply fully with the SPCC regulations, including correcting the violations that have been specifically identified in the Violations Form. Failure to correct the violations may lead to further EPA enforcement measures, irrespective of any payment received.

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

If you have any questions, 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]**.

Sincerely,

Delegated Official



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 1

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:

Delegated Official Date: _____

APPROVED BY RESPONDENT:

Name (print): _____

Title (print): _____

Signature: _____ Date: _____

IT IS SO ORDERED:

Date: _____

Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION
Address
CITY, STATE

EXPEDITED PENALTY ACTION
AND CONSENT AGREEMENT
DOCKET NO. [CWA-]

RESPONDENT
[Name]
[Address]

FACILITY
[Name]
[Address]

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"). The EPA representative found that Respondent had violated the regulations by failing to comply with the specific regulatory requirements noted on the attached SPILL PREVENTION CONTROL AND COUNTERMEASURE INSPECTION FINDINGS AND ALLGED VIOLATIONS AND PROPOSED PENALTY FORM "Form"), which is hereby incorporated by reference.

The parties enter into this Expedited Penalty Action and Consent Agreement ("Consent Agreement") to settle the alleged civil violations set forth in the Form for a penalty of \$[XXXXXX]. This Consent Agreement commences and concludes this action pursuant to Sections 22.13(b), and 22.18(b)(2), and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 CFR §§ 22.13(b), and 22.18(b)(2), and (3). This Consent Agreement is being entered into by the United States Environmental Protection Agency, Region # ("EPA"), by its duly delegated official, the TITLE OF THE OFFICIAL, and by Respondent pursuant to Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. §1321(b)(6)(B)(i), and by 40 CFR § 22.13(b).

The Consent Agreement is subject to the following terms and conditions.

EPA hereby finds the Respondent is subject to the Oil Pollution Prevention regulations and has violated the regulations as further described in the Violations Form.

Respondent certifies, subject to civil and criminal penalties for making a false statement to the United States Government, that the violations set forth in the Form have been corrected.

The Respondent consents to the assessment of a penalty in the amount of \$XXXXXX. The settlement amount was based upon EPA's consideration of a number of factors, including, but not limited to, the seriousness of the violations and the other factors provided in CWA Section 1321(b)(8). The Respondent agrees that it shall, within 30 calendar days of the date of issuance of the final order approving this Consent Agreement, make payment of \$ [XXXXXX] in one of four forms: 1) electronic funds transfer ("EFT"), 2) Automated Clearinghouse, 3) Pay.Gov, or 4) a cashier's check or certified check payable to the "Environmental Protection Agency", with the Docket Number, located at the top right-hand corner of the Expedited Penalty Action, and "Oil Spill Liability Trust Fund - 311" referenced on the check.

1) Payment of the penalty amount by EFT to:

Federal Reserve Bank of New York
ABA 021030004
Account 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary: Environmental Protection Agency

2) Payment of the penalty amount by Automated Clearinghouse (ACH) to EPA can be made through the U.S. Treasury using the following information:

U.S. Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22- Checking

Physical Location of the U.S. Treasury Facility:

5700 Rivertech Court
Riverdale, MD 20737

3) Payments made through Pay.gov:

- a) Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments. Follow these steps to make a payment:
- i. You **DO NOT** need a user name and password or account.
 - ii. Enter **SFO 1.1** in the form search box on the top left side of the screen.
 - iii. Open the form and follow the on-screen instructions
 - iv. Select your method of payment from the "Type of Payment" drop down menu.
 - v. Based on your selection, the corresponding line will open and no longer be shaded grey.
 - vi. Enter the docket number, invoice number, and other corresponding information into the field.

4) Payment of the penalty amount by regular US Postal Service shall be sent via **certified mail** to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Payment of the penalty amount by overnight mail (FedEx or other non-US Postal Service express mail) shall be sent to:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Within 24 hours of payment, the Respondent shall also send proof of payment to:

[Inspector's Name],
U.S. Environmental Protection Agency, Region #
Branch
ADDRESS
CITY

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region #
ADDRESS
CITY

The term "proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, 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 EPA Docket No. CWA-0x-20XX-XXXX.

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.

This Consent Agreement and the accompanying Final Order resolve only the civil penalty claims for the specific violations alleged in this Consent Agreement. Nothing in this Consent Agreement and the accompanying Final Order shall be construed to limit the United States authority to pursue criminal sanctions. In addition this settlement is subject to all limitations on the scope of resolution and the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Consent Agreement and accompanying Final Order following its filing with the Regional Hearing Clerk. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the CWA, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law.

Respondent neither admits nor denies the allegations set forth in the Violations Form, but agrees that jurisdiction has been established for this Consent Agreement. Also, upon EPA's final approval of the Consent Agreement, Respondent expressly waives its right to contest the allegations, through a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. §1321(b)(6)(B)(i), and to appeal the Consent Agreement under Section 311(b)(6)(G)(i) of the Act, 33 U.S.C. §1321(b)(6)(G)(i). Moreover, in entering into this Consent Agreement, the Respondent agrees to bear its own costs and attorney's fees related to this Consent Agreement. The parties consent to service of this Expedited Settlement Agreement and Final Order by e-mail at the following valid e-mail addresses: **[ORC attorney's e-mail address]** (for Complainant), and _____ (for Respondent).

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

ACCEPT THE PROPOSED PENALTY

☐ I/we consent to the proposed penalty.

DECLINE THE PROPOSED PENALTY

☐ I/we decline the proposed penalty. If you choose to decline this proposed penalty, you may be subject to formal enforcement action and, in that event, will have an opportunity to a hearing related to any subsequent penalty assessment.

COST OF COMPLIANCE

Respondent certifies that it has expended \$_____ to correct the alleged violations and to come into compliance.

EFFECTIVE DATE

This Consent Agreement will be effective upon filing.

The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind the party whom he or she represents thereto.

Respondent

Signature _____ Date _____

Name and Title (print): _____

SIGNATURE BY EPA:

_____ Date _____

Name, Director

Division

FINAL ORDER

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. §1321(b)(6), and in accordance with the Consolidated Rules of Practice, 40 CFR Part 22, and having relied upon the representations of the parties set forth in the Consent Agreement, I have determined that the penalty assessed herein is based on a consideration of the factors set forth in CWA Section 1321(b)(8) and EPA's Civil Penalty Policy for CWA Sections 311(b)(3) and 311(j) dated August 1998.

THEREFORE, the foregoing Consent Agreement is hereby approved and incorporated by reference into the Final Order. The Respondent is ORDERED, as set forth above, to pay the civil penalty.

Regional Judicial Officer

Date

**SUMMARY OF THE REVISED SPILL PREVENTION, CONTROL AND COUNTERMEASURES
(SPCC) PROGRAM EXPEDITED SETTLEMENT AGREEMENT PILOT
– SEPTEMBER 2019**

The Office of Enforcement and Compliance Assurance is piloting revisions to the Expedited Settlement Agreement (ESA) for the Spill Prevention, Control and Countermeasure (SPCC) Program. The pilot will last 18 months and replaces the current SPCC ESA which is used by some of the regions. The pilot is described below.

1. Purpose and goals

The ESA for the SPCC program was first approved as a Region 6 pilot in 1998. With the transmittal of the OECA memorandum entitled “Use of Expedited Settlements to Support Appropriate Tool Selection” (Suarez, 2003), the regions were invited to submit a request to implement the program in their region. Many of the regions requested authorization. On December 24, 2014, Mark Pollins, Water Enforcement Director, OECA, issued a memo to all regions authorized to use the SPCC ESA, containing editorial changes to the ESA checklist to more accurately conform to the relevant regulatory text, and to adjust the penalty amounts for inflation.

During the 18-month pilot, EPA regions will:

- Pilot the revised penalty values found in the checklist, as well as a new facility size multiplier.
- Pilot the following revised provisions of the SPCC ESA:
 - Increased penalty cap of \$15,000 (up from \$5,000);
 - Clarified “repeat violators” provision;
 - Criteria to evaluate the effectiveness of the SPCC ESA to determine whether any adjustments are needed; and
 - Updated/revised model documents that reflect regional feedback on using the current model documents.

2. Covered violations

Covered SPCC violations are described in the attached worksheets, Attachments E and F. A version of this checklist has been in place since the original SPCC ESA was developed in 1998 and updated in 2014 to reflect rule changes. If a facility has violations that are not on the checklist, an ESA cannot be used.

The pilot allows a region to offer SPCC ESAs to facilities subject to the Facility Response Plan (FRP) Program for easily correctable SPCC violations that do not cause significant health or environmental harm.

3. Return to compliance timeliness

The prior SPCC ESA required compliance within 30 days of receiving the offer without any consideration of the timeframe necessary to come into compliance. While all the actions in the ESA are theoretically easily correctable, this may not be achievable in some regions depending on the

weather and the ability to expeditiously hire a Professional Engineer. The revised ESA allows for an extension of up to 90 days upon written agreement with the facility.

4. Repeat violators

An ESA may be offered to a repeat violator. A repeat violator is a violator who, in the past five years, has had the same or closely-related violation(s) that were subject of an enforcement action at the facility, or at other facilities under the ownership, operation, or control of the violator. 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 enforcement 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, such that no more than two ESAs can be issued to a facility.

If multiple facilities owned by the same owner/operator are inspected within a short time frame, facilities owned/operated by that owner or operator should not be considered a repeat violator just because there were violations at more than one facility. Each facility would be eligible for an ESA such that the issuance of an ESA to one facility would not exclude eligibility for others. However, the total combined penalty for all ESAs issued to an owner/operator may not exceed \$47,357 or the current Class I penalty under 311(b)(B) as amended for inflation.

5. Penalty reductions

The penalty structure prescribes a specific penalty amount for each violation. This penalty amount has been adjusted to reflect an increase for inflation since the last update to the ESA in 2014.

Also, because the revised SPCC ESA can be issued to larger FRP facilities, the ESA also includes a new discretionary multiplier for various size categories based on total oil storage capacity. The multiplier is based on the size categories reported in the Agency's SPCC Plan Information Collection Request (ICR) (EPA ICR No. 0328.17, OMB No. 2050-0021) and a distinction between smaller and larger SPCC facilities regulated by the FRP Program. The multiplier begins at 0.75 and increases by 0.25 for each subsequent facility size category. 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 Matrix (Attachments E and F). 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 final ESA penalty amount less than a SPCC-regulated facility with over 10,000,000-gallons in oil storage capacity.

The ESA includes a cap on the total penalty that can be assessed via an ESA. The proposed pilot updates the penalty cap in the original ESA program to account for inflation and the fact that FRP facilities can be offered an ESA (e.g., the new facility-size multiplier) by raising the cap to \$15,000 from \$5,000. 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.

6. Model ESA documents

Attached are the model documents for the pilot. The violation checklists are Excel files, which calculate the penalty based on the identified violations. There are two versions of the Order and letters because the 2014 Guidance allows for penalties to either be collected at the time the facility accepts the ESA or once the Regional Judicial Officer finalizes the Order. The model documents include each of these options.