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U.S. EPA REGION 5
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In The Matter Of:) Docket No. CWA-05-2024-0010
Pri Mar Petroleum, Inc.)
) Proceeding to Assess a Class II Civil Penalty
St. Joesph, Michigan,) Under Section 311(b)(6) of the Clean Water
Niles, Michigan, and) Act, 33 U.S.C. § 1321(b)(6)
Bangor, Michigan)

Respondent.

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 311(b)(6)(A)(ii) for Spill Prevention, Control, and Countermeasure (SPCC) violations of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6)(A)(ii), and Sections 22.1(a)(6), 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Superfund Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Pri Mar Petroleum, Inc. (PriMar), a Michigan corporation.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Judicial Review and Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and alleged violations in this CAFO.

8. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including its right to request a hearing under 40 C.F.R. § 22.15(c) and Section 311(b)(6)(B)(ii), 33 U.S.C. § 1321(b)(6)(B)(ii); its right to seek federal judicial review under Section 311(b)(6)(G) of the CWA, 33 U.S.C. § 1321(b)(6)(G), and Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; any right to contest the allegations in this CAFO; and its right to appeal this CAFO.

Statutory and Regulatory Background

Spill prevention, control, and countermeasure plan requirements

9. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore and offshore facilities, and to contain such discharges. The authority to promulgate these regulations for non-transportation-related onshore facilities has been delegated to EPA by Executive Order 12777 (Oct. 18, 1991).

10. The oil pollution prevention regulations at 40 C.F.R. Part 112 implement the requirements of Section 311(j)(1)(C) of the CWA, and set forth procedures, methods, equipment, and other requirements to prevent the discharge of oil and hazardous substances from

non-transportation-related onshore facilities into or upon, among other things, the navigable waters of the United States and adjoining shorelines. 40 C.F.R § 112.1(a)(1).

11. The oil pollution prevention regulations at 40 C.F.R. Part 112 apply to, among other things, owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products, which due to their location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in 40 C.F.R. § 110.3, into or upon the navigable waters of the United States or adjoining shorelines, and have an aboveground oil storage capacity of more than 1,320 U.S. gallons or a completely buried oil storage capacity greater than 42,000 U.S. gallons. 40 C.F.R. §§ 112.1(b) and (d)(2).

12. 40 C.F.R. § 112.3(a)(1) requires the owner or operator of a subject facility to prepare in writing and implement a Spill Prevention, Control, and Countermeasure Plan (“SPCC Plan”) in accordance with the requirements of 40 C.F.R. Part 112.

13. 40 C.F.R. § 112.5(a) requires the owner or operator to amend the SPCC Plan for the facility in accordance with the general requirements in § 112.7, and with any specific section of this part applicable to the facility, when there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge as described in § 112.1(b). An amendment made under this section must be prepared within six months, and implemented as soon as possible, but not later than six months following preparation of the amendment.

14. 40 C.F.R. § 112.5(b) requires the owner or operator complete a review and evaluation of the SPCC Plan at least once every five years from the date the facility becomes subject to this part; or five years from the date the last review.

15. 40 C.F.R. § 112.7 requires that if the owner or operator of a facility subject to 40 C.F.R. Part 112 does not follow the sequence specified for the Plan in 40 C.F.R. § 112.7(a)-(k) (as applicable), an equivalent Plan must be prepared that meets all of the applicable requirements listed in 40 C.F.R. Part 112 and that is supplemented with a section cross-referencing the location of requirements listed in 40 C.F.R. Part 112 and the equivalent requirements in the other prevention plan.

16. 40 C.F.R. § 112.7(a)(3) and 112.7(a)(3)(i) requires that the SPCC Plan describe the physical layout of the facility and include a facility diagram that identifies the location and contents of each fixed oil storage container, among other requirements.

17. 40 C.F.R. § 112.7(a)(3)(iii) requires that the SPCC Plan address discharge or drainage controls such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge.

18. 40 C.F.R. § 112.7(a)(3)(vi) requires that the SPCC Plan include a contact list and phone numbers for the facility response coordinator, National Response Center, cleanup contractors with whom the facility has an agreement for response, and all appropriate Federal, State, and local agencies who must be contacted in case of a discharge.

19. 40 C.F.R. § 112.7(b) requires that the SPCC Plan must include a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure.

20. 40 C.F.R. § 112.7(c) requires that appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in 40 C.F.R. § 112.1(b) be provided and 40 C.F.R. § 112.7(a)(1) requires that conformance with this requirement be discussed in the Plan.

21. 40 C.F.R. § 112.7(e) requires that inspections and tests be conducted, and documentation of such tests be maintained in accordance with written procedures and 40 C.F.R. § 112.7(a)(1) requires that conformance with this requirement be discussed in the Plan.

22. 40 C.F.R. § 112.7(f) requires that oil-handling personnel be trained in the operation and maintenance of equipment to prevent discharges, discharge procedure protocols, applicable pollution control laws, rules and regulations, general facility operations and the contents of the facility SPCC Plan.

23. 40 C.F.R. § 112.7(h)(1) requires where loading/unloading rack drainage does not flow into a catchment basin or treatment facility designed to handle discharges, a quick drainage system for tank car or tank truck loading/unloading racks must be used. The containment system must be designed to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the facility and 40 C.F.R. § 112.7(a)(1) requires that conformance with this requirement be discussed in the Plan.

24. 40 C.F.R. § 112.7(h)(2) requires that warning lights, barrier systems, signs, wheel chocks or brake interlock systems are in the area adjacent to the loading/unloading racks to prevent vehicles from departing before complete disconnection of flexible or fixed oil transfer lines.

25. 40 C.F.R. § 112.7(h)(3) requires that, before any tank car or tank truck is filled and departs a facility, it shall be closely inspected for discharges from the lowermost drain and all outlets of such vehicles.

26. 40 C.F.R. § 112.8(b)(1) requires that facilities that empty diked areas using a pump must inspect the accumulated water before starting to ensure that no oil will be discharged. 40 C.F.R. § 112.7(a)(1) requires that conformance with this requirement be discussed in the Plan.

27. 40 C.F.R. § 112.8(b)(2) requires that valves be manual, open-and-closed design, for the drainage of diked areas. If the facility drainage drains directly into a watercourse and not

into an on-site wastewater treatment plant, it must inspect and may drain uncontaminated retained stormwater.

28. 40 C.F.R. § 112.8(b)(3) requires that drainage from undiked areas with a potential for discharge be designed to flow into ponds, lagoons, or catchment basins designed to retain oil or return it to the facility in the event of a discharge. 40 C.F.R. § 112.8(b)(4) requires that when a facility drainage is not engineered as in 40 C.F.R. § 112.8(b)(3) the facility is required to equip the final discharge of all ditches inside the facility with a diversion system that would, in the event of an uncontrolled discharge, retain oil in the facility. 40 C.F.R. § 112.7(a)(1) requires that conformance with these requirements be discussed in the Plan.

29. 40 C.F.R. § 112.8(c)(1) requires containers used for the storage of oil be compatible with the material stored and conditions of storage such as pressure and temperature and 40 C.F.R. § 112.7(a)(1) requires that conformance with these requirements be discussed in the Plan.

30. 40 C.F.R. § 112.8(c)(2) requires that all bulk storage tank installations be constructed with secondary containment to hold the entire capacity of the largest single container and sufficient freeboard for precipitation, and that diked areas are sufficiently impervious to contain an oil discharge.

31. 40 C.F.R. § 112.8(c)(3) does not allow drainage of uncontaminated rainwater from diked areas into storm drains or discharge of an effluent into an open watercourse, lake or pond, bypassing the facility treatment system unless the owner or operator meets specific conditions identified in 40 C.F.R. § 112.8(c)(3), which include inspection of the accumulated stormwater and documentation of those inspections. 40 C.F.R. § 112.7(a)(1) requires that conformance with these requirements be discussed in the Plan.

32. 40 C.F.R. § 112.8(c)(6) requires, among other things, that the owner or operator test or inspect each aboveground container for integrity on a regular schedule and whenever material

repairs are made. 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 consider container size, configuration, and design. The owner or operator must keep comparison records and inspect each aboveground container's supports and foundations. In addition, the owner or operator must frequently inspect the outside of each aboveground container for signs of deterioration, discharges, or accumulation of oil inside diked areas. 40 C.F.R. § 112.7(a)(1) requires that conformance with these requirements be discussed in the Plan.

33. 40 C.F.R § 112.8(c)(8) requires that each container installation is engineered or updated in accordance with good engineering practices to avoid discharges, and that each container installation is provided with at least one of the devices listed in 40 C.F.R § 112.8(c)(8)(i)-(iv) to measure the liquid level.

34. 40 C.F.R. § 112.8(c)(8)(v) requires the facility to regularly test liquid level devices to ensure proper operation.

35. 40 C.F.R. § 112.8(c)(9) requires that effluent treatment facilities be observed frequently enough to detect possible system upsets that could cause a discharge as described in 40 C.F.R. § 112.1(b) and 40 C.F.R. § 112.7(a)(1) requires that conformance with these requirements be discussed in the Plan.

36. 40 C.F.R. § 112.8(c)(10) requires that visible discharges which result in a loss of oil from a container, including but not limited to seams, gaskets, piping, pumps, valves, rivets, and bolts are promptly corrected, and oil in diked areas is promptly removed.

37. 40 C.F.R § 112.8(c)(11) requires that mobile or portable oil storage containers be positioned or located to prevent a discharge as described in 40 C.F.R. § 112.1(b), and that they have secondary containment.

38. 40 C.F.R. § 112.8(d)(1) requires that buried piping that is installed or replaced on or after August 16, 2002 be provided with a protective wrapping and coating and also requires that the piping is cathodically protected. 40 C.F.R. § 112.7(a)(1) requires that conformance with these requirements be discussed in the Plan.

39. 40 C.F.R. § 112.8(d)(2) requires that terminal connections are capped or blank flanged at the transfer point and marked as to origin when piping is not in service or is in standby service for an extended time. 40 C.F.R. § 112.7(a)(1) requires that conformance with these requirements be discussed in the Plan.

40. 40 C.F.R. § 112.8(d)(3) requires that pipe supports are designed properly to minimize abrasion and corrosion and allow for expansion and contraction.

41. 40 C.F.R. § 112.8(d)(4) requires that above ground valves, piping and appurtenances are inspected regularly, and that buried piping is integrity and leak tested at the time of installation, modification, construction, relocation, or replacement. 40 C.F.R. § 112.7(a)(1) requires that conformance with these requirements be discussed in the Plan.

General provisions and enforcement of the CWA

42. Pursuant to Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), and Executive Order 11735 (Aug. 3, 1973), EPA determined by regulation the discharge quantities of oil and any hazardous substances that may be harmful to the public health or welfare or environment of the United States, which are codified at 40 C.F.R. Part 110. Under 40 C.F.R. § 110.3, discharges of oil which may be harmful include discharges of oil that: (a) violate applicable water quality standards; or (b) cause 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.

43. Appendix A to 40 C.F.R. Part 112, Memorandum of Understanding between the Secretary of Transportation and EPA, defines “non-transportation-related” facility to include: oil production facilities including all equipment and appurtenances related thereto; oil refining facilities including all equipment and appurtenances related thereto; oil storage facilities including all equipment and appurtenances related thereto, as well as fixed bulk plant storage and terminal oil storage facilities; industrial, commercial, agricultural or public facilities which use and store oil; and waste treatment facilities, including in-plant pipelines, effluent discharge lines, and storage tanks.

44. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as the waters of the United States, including the territorial seas. The regulations at 40 C.F.R. § 112.2 and § 120.2 further define “navigable waters” as all navigable waters of the United States, including traditionally navigable waters and relatively permanent, standing, or continuously flowing tributaries of waters.

45. Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2, define “onshore facility” as any facility of any kind located in, on, or under any land within the United States, other than submerged land.

46. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2, define “oil” as oil of any kind and in any form, including but not limited to: petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

47. Section 311(a)(6)(B) of the CWA, 33 U.S.C. § 1321(a)(6)(B), and 40 C.F.R. § 112.2, define “owner or operator” in the case of an onshore facility as any person owning or operating such onshore facility.

48. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2, define “person” as including an individual, firm, corporation, association, and a partnership.

49. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), and 40 C.F.R. § 112.2 define “discharge” to include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

50. EPA may assess a class II civil penalty against any owner, operator, or person in charge of any onshore facility who fails or refuses to comply with any regulations issued under Section 311(j) of the CWA, 33 U.S.C. 1321(j), pursuant to Section 311(b)(6)(A)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(A)(ii).

51. For violations of 33 U.S.C. § 1321(j) EPA has authority, under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), as amended by the Debt Collection Improvement Act and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, and implemented by 40 C.F.R. Part 19, Adjustment of Civil Monetary Penalties for Inflation, to file an Administrative Complaint seeking a civil penalty of \$23,048 per violation, or seeking \$23,048 per day for each day during which a violation continues, up to a maximum of \$288,080 for violations occurring after November 2, 2015 and penalties assessed after December 27, 2023.

Factual Allegations and Alleged Violations

52. Respondent owns and operates oil storage facilities located at 1207 Broad Street, St Joseph, Michigan (“St. Joseph Facility”); 1429 Lake Street, Niles, Michigan, (“Niles Facility”); and 609 West Arlington Street, Bangor, Michigan (“Bangor Facility”).

53. Respondent is a Michigan corporation and is therefore a “person” as defined in Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7) and 40 C.F.R. § 112.2.

54. Respondent is an “owner” and “operator” of each Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.

55. Each Facility is located on land within the United States and is therefore an “onshore facility” as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

56. The St. Joseph and Niles Facilities are located on, and could reasonably affect, the St. Joseph River.

57. The St. Joseph River is a Class I river and tributary of Lake Michigan.

58. The Bangor Facility is located on, and could reasonably affect, Maple Creek.

59. Maple Creek is a Class IV river that flows into Black River and Lake Michigan.

60. The St. Joseph River, Maple Creek, Black River, and Lake Michigan are each a “navigable water” of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 112.2 and § 120.2.

61. The St. Joseph, Niles, and Bangor Facilities are bulk fuel storage and oil loading/unloading and is therefore an onshore “non-transportation-related” facility within the meaning of 40 C.F.R. Part 112, Appendix A.

62. The St. Joseph, Niles, and Bangor Facilities have aggregate oil storage capacities of 340,240 gallons, 58,476 gallons, and 66,200 gallons, respectively.

63. The oil that Respondent stores, handles, processes, distributes and/or consumes at the St. Joseph Facility could reasonably be expected to discharge to the St. Joseph River and Lake Michigan.

64. The oil that Respondent stores, handles, processes, distributes and/or consumes at the Niles Facility could reasonably be expected to discharge to the St. Joseph River and Lake Michigan.

65. The oil that Respondent stores, handles, processes, distributes and/or consumes at the Bangor Facility could reasonably be expected to discharge to Maple Creek, Black River, and Lake Michigan.

66. Respondent is an owner and/or operator of a non-transportation-related onshore facility engaged in storing, processing, transferring, using or distributing oil and oil products, which, due to its location, could reasonably be expected to discharge oil in quantities that may be harmful as described in 40 C.F.R. Part 110 into or on the navigable waters or adjoining shorelines within the meaning of Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), and 40 C.F.R. § 112.1, and is therefore subject to the oil pollution prevention regulations at 40 C.F.R. Part 112.

67. Respondent is subject to the spill prevention, control and countermeasure plan regulations and is therefore required to prepare and implement a SPCC Plan in accordance with the requirements of 40 C.F.R. Part 112.

68. At all times relevant to this Complaint, Respondent's SPCC Plan for the St. Joseph Facility was dated September 18, 2018. ("St. Joseph Plan").

69. At all times relevant to this Complaint, Respondent's SPCC Plan for the Niles Facility at location was dated September 10, 2018. ("Niles Plan").

70. At all times relevant to this Complaint, Respondent's SPCC Plan for the Bangor Facility at location was dated December 15, 2016. ("Bangor Plan").

71. On November 20, 2019, EPA conducted an inspection at the St. Joseph Facility. On November 21, 2019, EPA conducted an inspection at the Niles Facility. On November 20, 2019, EPA conducted an inspection of the Bangor Facility. These inspections both separately and collectively are herein referred to as the “November 2019 Inspection” as appropriate.

Alleged Violations – St. Joseph Facility

72. The St. Joseph Plan did not follow the sequence specified for the Plan in 40 C.F.R. § 112.7(a)-(k) (as applicable). At the time of the November 2019 Inspection, the St. Joseph SPCC Plan did not meet all the applicable requirements listed in 40 C.F.R. Part 112, in violation of 40 C.F.R. § 112.7.

73. The St. Joseph Plan did not describe or contain a diagram that identified the location and contents of each fixed oil storage container, in violation of 40 C.F.R. § 112.7(a)(3).

74. The St. Joseph Plan did not address discharge or drainage controls such as secondary containment around all containers and other structures, equipment, and procedures for the control of a discharge, in violation of 40 C.F.R. § 112.7(a)(3)(iii).

75. The St. Joseph Plan did not include a contact list and phone number that included the facility response coordinator, in violation of 40 C.F.R. § 112.7(a)(3)(vi).

76. The St. Joseph Plan did not include a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure, in violation of 40 C.F.R. § 112.7(b).

77. During the November 2019 Inspection, EPA noted that the St. Joseph Facility did not have secondary containment structures for the facility’s bulk storage containers or oil-filled equipment, nor did its Plan contain a discussion of the facility’s conformance with this requirement, in violation of 40 C.F.R. § 112.7(c) and 112.7(a)(1).

78. During the November 2019 Inspection, EPA noted that the loading/unloading rack drainage at the St. Joseph Facility did not flow into a catchment basin or treatment facility designed to handle a discharge.

79. During the November 2019 Inspection at the St. Joseph Facility, EPA noted that the St. Joseph Facility did not use a quick drainage system for tank car or tank truck loading/unloading racks as required, in violation of 40 C.F.R. § 112.7(h).

80. The St. Joseph Plan did not discuss how the facility will comply with the requirement of 40 CFR Part 112.7(h)(1), in violation of 40 C.F.R. § 112.7(a)(1).

81. During the November 2019 Inspection, EPA noted that the St. Joseph Facility did not post warning signs and that wheel chocks were not available adjacent to the loading/unloading racks, in violation of 40 C.F.R. § 112.7(h)(2).

82. The St. Joseph Plan stated that lowermost drain inspections will be documented to comply with 40 C.F.R. § 112.7(h)(3).

83. At the time of the November 2019 Inspection, EPA noted that no documentation of lowermost drain inspections was available, in violation of the 40 C.F.R. § 112.7(h)(3). Failure to implement the requirement of the St. Joseph Plan to inspect and document the inspection of the lowermost drain is a violation of 40 C.F.R. § 112.3(a)(1).

84. During the November 2019 Inspection, EPA noted several undiked areas with a potential for discharge and without ponds, lagoons, or catchment basins to capture drainage. In addition, the facility drainage was not engineered, nor was the facility equipped with diversion system, to retain oil in the facility. Nor did the St. Joseph Facility 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. This is a violation of 40 C.F.R. § 112.8(b)(3) and 40 C.F.R. § 112.8(b)(4).

85. The St. Joseph Plan did not describe how drainage from undiked areas is designed to flow into ponds, lagoons, or catchment basins, nor did it describe how to retain a discharge or return it to the facility as required by 40 C.F.R. § 112.8(b)(3) in violation of 40 C.F.R. § 112.7(a)(1).

86. The St. Joseph SPCC Plan did not specify that the material and condition of storage at the facility was compatible with the materials and construction of the tanks in violation of 40 C.F.R. § 112.8(c)(1) and 112.7(a)(1). During the November 2019 Inspection, the facility could not demonstrate compatibility for Tanks 6, 7, 8, and 9 in violation of 40 C.F.R. § 112.8(c)(1).

87. During the November 2019 Inspection, EPA noted that the St. Joseph Facility provided insufficient secondary containment for each of its containers and diked areas were not sufficiently impervious to contain an oil discharge in violation of 40 C.F.R. § 112.8(c)(2).

88. The St. Joseph Plan stated accumulated water from external tank containment areas is pumped to permeable areas of the property. During the November 2019 Inspection, EPA noted that the St. Joseph Facility's regular practice was that drainage from the diked storage areas is manually pumped into the sewer, however the required inspections were not documented. Failure to implement the written requirements of the St. Joseph Plan is a violation of 40 C.F.R. § 112.3(a)(1).

89. During the November 2019 Inspection, EPA noted that the bulk storage areas at the St. Joseph Facility had standing water in the diked storage areas, in violation of 40 C.F.R. § 112.8(c)(3).

90. During the November 2019 Inspection, EPA noted that integrity testing had not been conducted at the St. Joseph Facility. EPA also noted that inspection of supports and foundations were documented, yet there was severe deterioration of storage container saddles and structural supports, in violation of 40 C.F.R. § 112.8(c)(6). PriMar's St. Joseph SPCC Plan did not discuss how it retains or uses comparison records, how it retains records, and did not define the appropriate qualifications for inspectors conducting tank inspections, in violation of 40 C.F.R. § 112.7(a)(1).

91. During the November 2019 Inspection at the St. Joseph Facility, EPA noted that some containers were not equipped with adequate liquid level devices in violation of 40 C.F.R. § 112.8(c)(8).

92. During the November 2019 Inspection at the St. Joseph Facility, EPA also noted that the liquid level devices at the facility had not been tested, in violation of 40 C.F.R. § 112.8(c)(8)(v).

93. During the November 2019 Inspection at the St. Joseph Facility, EPA noted that several drums and totes did not have secondary containment in violation of 40 C.F.R. § 112.8(c)(11).

94. During the November 2019 Inspection at the St. Joseph Facility, EPA noted underground piping subject to the rule. The St. Joseph Plan did not discuss buried piping, as required by 40 C.F.R. § 112.8(d)(1) in violation of 40 C.F.R. § 112.7(a)(1).

95. The St. Joseph Plan did not address whether terminal connections at the transfer points are marked and capped, as required by 40 C.F.R. § 112.8(d)(2) and in violation of 40 C.F.R. § 112.7(a)(1).

96. During the November 2019 Inspection at the St. Joseph Facility, EPA noted pipe supports were functioning as supports in the diked storage area, with gaps between the pipe supports and the piping, in violation of 40 C.F.R. § 112.8(d)(3).

97. The St. Joseph Plan did not address buried piping integrity and leak testing, as required by 40 C.F.R. § 112.8(d)(4) and in violation of 40 C.F.R. § 112.7(a)(1).

Alleged Violations – Niles Facility

98. During the November 2019 Inspection, EPA noted that the Niles Plan did not follow the sequence specified for the Plan in 40 C.F.R. § 112.7(a)-(k) or provide an equivalent plan that meets all the applicable requirements listed in 40 C.F.R. Part 112, in violation of 40 C.F.R. § 112.7.

99. During the November 2019 Inspection, EPA noted that the Niles Plan did not describe nor contain a diagram that identified the location and contents of each fixed oil storage container, in violation of 40 C.F.R. § 112.7(a)(3).

100. During the 2019 November Inspection, the Niles Plan did not include a contact list and phone number that included the facility response coordinator, in violation of 40 C.F.R. § 112.7(a)(3)(vi).

101. During the November 2019 Inspection, the Niles Plan did not include a prediction of the rate of flow of oil which could be discharged from the facility as a result of each type of major equipment failure, in violation of 40 C.F.R. § 112.7(b).

102. During the November 2019 Inspection, EPA noted that the Niles Facility did not provide secondary containment structures for all the facility's bulk storage containers or oil-filled equipment, nor did its Plan contain a discussion of the facility's conformance with this requirement, in violation of 40 C.F.R. § 112.7(c) and 112.7(a)(1).

103. During the November 2019 Inspection, EPA noted that the Niles Facility did not use a quick drainage system for tank car or tank truck loading/unloading racks as required, in violation of 40 C.F.R. § 112.7(h).

104. During the November 2019 Inspection, EPA noted the Niles SPCC Plan did not discuss how the facility will comply with the requirement of 40 CFR Part 112.7(h)(1), in violation of 40 C.F.R. § 112.7(a)(1).

105. During the November 2019 Inspection, EPA noted that the Niles Plan stated that all loading/unloading areas contain signage and wheel chocks. Wheel chocks were not available adjacent to the loading/unloading racks, in violation of 40 C.F.R. § 112.7(h)(2). Failure to implement this requirement of the Niles Plan is a violation of 40 C.F.R. § 112.3(a)(1).

106. The Niles Plan stated that lowermost drain inspections should be documented; at the time of the November 2019 Inspection, lowermost drain inspection were not performed or documented, in violation of 40 C.F.R. § 112.7(h)(3). Failure to implement this requirement of the Niles Plan is a violation of 40 C.F.R. § 112.3(a)(1).

107. During the November 2019 Inspection, EPA noted animal burrows in some of the Niles facility bulk storage diked areas and a manhole in the diked area basin. These factors compromise the permeability of the dike walls and hamper its ability to contain an oil discharge, in violation of 40 C.F.R. § 112.8(c)(2) and 112.8(a).

108. During the November 2019 Inspection, EPA noted that the Niles Plan did not address drainage of uncontaminated rainwater from diked areas into storm drains or discharge of an effluent into an open watercourse, lake or pond bypassing the facility treatment system as required by 40 C.F.R. 112.8(c)(3), in violation of 40 C.F.R. § 112.7(a)(1). During the November 2019 Inspection, it was stated that drainage from the diked storage areas is manually pumped into the sewer. However, no drainage records, documentation or permits were available. Failure to implement the requirement of the Niles Plan is a violation of 40 C.F.R. § 112.3(a)(1).

109. During the November 2019 Inspection at the Niles Facility, EPA noted standing water in the diked storage areas, in violation of 40 C.F.R. § 112.8(c)(3).

110. During the November 2019 Inspection at the Niles Facility, EPA noted that integrity testing has not been conducted on any of the storage tanks in violation of 40 C.F.R. § 112.8(c)(6).

111. During the November 2019 Inspection, EPA noted that the Niles Plan did not discuss how it retains or uses comparison records, how it retains records, nor did it define the appropriate qualifications for inspectors conducting tank inspections as required by 40 C.F.R. § 112.8(c)(6) in violation of 40 C.F.R. § 112.7(a)(1).

112. During the November 2019 Inspection, EPA noted that the Niles SPCC Plan did not address how frequent the observations from the effluent treatment facilities are to be made, the method used to detect possible systems upset that could lead to a discharge, or how the observations were to be documented as required by 40 C.F.R. § 112.8(c)(9) in violation of 40 C.F.R. § 112.7(a)(1).

113. During the November 2019 Inspection, EPA observed a sheen in secondary containment that was the result of a loss of oil from a container that had not promptly removed, in violation of 40 C.F.R. § 112.8(c)(10).

114. During the November 2019 Inspection, EPA observed that drums were not positioned to prevent a discharge in the event of a release and did not have secondary containment as required, in violation of 40 C.F.R. § 112.8(c)(11).

115. During the November 2019 Inspection, EPA noted that the Niles Plan did not discuss buried piping as required by 40 C.F.R. § 112.8(d)(1) in violation of 40 C.F.R. § 112.7(a)(1).

116. During the November 2019 Inspection, EPA noted that the Niles SPCC Plan did not address whether piping terminal connections at the transfer points are marked and capped as required by 40 C.F.R. § 112.8(d)(2), in violation of 40 C.F.R. § 112.7(a)(1.)

117. During the November 2019 Inspection, EPA observed that several pipes were held up by wood and concrete which does not provide proper support for the piping in the diked areas in violation of 40 C.F.R. § 112.8(d)(3).

118. During the November 2019 Inspection, EPA noted that the Niles Plan did not address buried piping integrity and leak testing as required by 40 C.F.R. § 112.8(d)(4) in violation 40 C.F.R. § 112.7(a)(1).

Alleged Violations – Bangor

119. The Bangor SPCC Plan had not been revised to reflect new equipment installed at the facility such as pumps and motors since 2016, in violation of 40 C.F.R. § 112.5(a) and §112.5(b).

120. During the November 2019 Inspection, EPA noted the Bangor Plan did not follow the sequence specified for the Plan in 40 C.F.R. § 112.7(a)-(k) nor provide an equivalent plan that meets all the applicable requirements listed in 40 C.F.R. Part 112, in violation of 40 C.F.R. § 112.7.

121. During the November 2019 Inspection, EPA noted the Bangor Plan did not describe or contain a diagram that identified the location and contents of each fixed oil storage container, in violation of 40 C.F.R. § 112.7(a)(3).

122. During the November 2019 Inspection, EPA noted the Bangor Plan did not include a contact list and phone number that included the facility response coordinator, in violation of 40 C.F.R. § 112.7(a)(3)(vi).

123. During the November 2019 Inspection, EPA noted the Bangor Plan did not include a prediction of the rate of flow of oil which could be discharged from the facility as a result of each type of major equipment failure, in violation of 40 C.F.R. § 112.7(b).

124. During the November 2019 Inspection, EPA noted that the Bangor Facility did not use a quick drainage system for tank car or tank truck loading/unloading racks as required, in violation of 40 C.F.R. § 112.7(h).

125. During the November 2019 Inspection, EPA noted the Bangor Plan did not discuss how the facility will comply with the requirements of 40 CFR Part 112.7(h)(1), in violation of 40 C.F.R. § 112.7(a)(1).

126. During the November 2019 Inspection, EPA noted that the Bangor Plan stated that all loading/unloading areas contain signage and wheel chocks. However, EPA noted that warning signs and wheel chocks were not posted or available adjacent to the loading/unloading racks in violation of 40 C.F.R. § 112.7(h)(2). Failure to implement this requirement of the Bangor Plan is a violation of 40 C.F.R. § 112.3(a)(1).

127. During the November 2019 Inspection, EPA noted the Bangor Plan stated that lowermost drain inspections would be documented. At the time of the November 2019 Inspection EPA noted that the lowermost drain inspections were not performed or documented, in violation of 40 C.F.R. § 112.7(h)(3). Failure to implement this requirement of the Bangor Plan is a violation of 40 C.F.R. § 112.3(a)(1).

128. During the November 2019 Inspection, EPA noted manual valves in the drainage for the diked areas, these valves are not discussed in the Bangor SPCC Plan, as required by 40 C.F.R. §112.8(b)(2) and in violation of 40 C.F.R. § 112.7(a)(1).

129. During the November 2019 Inspection, EPA noted the Bangor Plan did not describe how drainage from undiked areas is designed to be retained or returned to the facility and how it is supposed to be treated as required by 40 C.F.R. § 112.8(b)(3), in violation of 40 C.F.R. § 112.7(a)(1).

130. Section 4.3.2 of the Bangor SPCC Plan states “The Facility Manager inspects the retained rainwater, prior to removal to ensure that its presence will not cause a discharge as described in 40 C.F.R. 112.1(b). Records are kept of stormwater drainage/pumping events on the Record of Drainage form contained in Appendix K.” During the November 2019 Inspection, EPA noted that drainage from the diked storage areas was manually pumped into the sewer and that no drainage records, documentation, or permits were available in violation 40 C.F.R. § 112.8(c)(3). Failure to implement this requirement of the Bangor Plan is a violation of 40 C.F.R. § 112.3(a)(1).

131. During the November 2019 Inspection at the Bangor Facility, EPA noted that integrity testing had not been conducted, in violation of 40 C.F.R. § 112.8(c)(6).

132. During the November 2019 Inspection, EPA noted that the Bangor Plan did not discuss how it retains or uses comparison records, how it retains records, nor did it define the appropriate qualifications for inspectors conducting tank inspections, in violation of 40 C.F.R. § 112.8(c)(6) and 40 C.F.R. § 112.7(a)(1).

133. During the November 2019 Inspection at the Bangor Facility, EPA noted that the liquid level devices at the facility had not been tested, in violation of 40 C.F.R. § 112.8(c)(8)(v).

134. At the time of inspection, the Bangor SPCC Plan did not address how frequent the observations from the effluent treatment facilities are to be made, the method used to detect possible systems upset that could lead to a discharge, or how the observations would be documented as required by 40 C.F.R. §112.8(c)(9) in violation of 40 C.F.R. § 112.7(a)(1).

135. At the time of inspection, the Bangor SPCC Plan did not discuss buried piping as required by 40 C.F.R. § 112.8(d)(1) in violation of 40 C.F.R. § 112.7(a)(1).

136. At the time of inspection, the Bangor SPCC Plan did not address whether piping terminal connections at the transfer points are marked and capped as required by 40 C.F.R. § 112.8(d)(2), in violation of 40 C.F.R. § 112.7(a)(1).

137. During the November 2019 Inspection, EPA observed at the Bangor Facility that several pipes were supported by wood and concrete which does not provide proper support for the piping in the diked areas in violation of 40 C.F.R. § 112.8(d)(3).

Civil Penalty

138. Based on analysis of the factors specified in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), the facts of this case, and the *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act*, dated August 1998, Complainant has determined that an appropriate civil penalty to settle this action is \$104,500.

139. Within 30 days of the effective date of this CAFO, Respondent must pay a \$104,500 civil penalty by electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045

In the comment or description field of the electronic funds transfer, state Respondent’s name, “OSLTF – 311,” and the docket number of this CAFO.

140. Respondent must send a notice of payment to EPA that states Respondent’s name and the docket number of this CAFO at the following email addresses when it pays the penalty:

Greg Chomycia
Superfund and Emergency Management Division
U.S. Environmental Protection Agency, Region 5
chomycia.greg@epa.gov

Sarah Baehr
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
baehr.sarah@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
grange.juliane@epa.gov

141. This civil penalty is not deductible for federal tax purposes.
142. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

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

- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at wise.milton@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

143. If Respondent does not timely pay the civil penalty, Complainant may request the United States Department of Justice to bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expenses for the collection action under Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

144. Respondent must pay the following on any amount overdue under this CAFO: the interest accrued on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings; a nonpayment penalty each quarter during which the assessed penalty is overdue, which shall be 20 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. *See* 33 U.S.C. § 1321(b)(6)(H).

General Provisions

145. The parties consent to service of this CAFO by email at the following email addresses: baehr.sarah@epa.gov (for Complainant) and krmarzke@primarpetro.com (for Respondent). Respondent understands that the CAFO will become publicly available upon proposal for public comment and upon filing.

146. Full payment of the penalty as described in Paragraph 139, above, and full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

147. Full payment of a penalty described in Paragraph 139, above, and full compliance with this CAFO shall not in any case affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

148. This CAFO does not affect Respondent's responsibility to comply with the CWA and other applicable federal, state, or local laws and permits.

149. Respondent certifies that it is complying with Section 311 of the CWA, 33 U.S.C. § 1321, the implementing oil pollution prevention regulations at Part 112.

150. This CAFO constitutes a "prior violation" as that term is used in EPA's *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* to determine Respondent's "history of prior violations" under Section 311(b)(8) of the CWA 33 U.S.C. § 1321(b)(8).

151. The terms of this CAFO bind Respondent and its successors and assigns.

152. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CAFO.

153. Each party agrees to bear its own costs and attorney fees in this action.

154. This CAFO constitutes the entire agreement between the parties.

155. The parties acknowledge and agree that final approval by EPA of this CAFO is subject to Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i) which provides, among other procedural requirements, public notice and a reasonable opportunity to comment on any proposed penalty order.

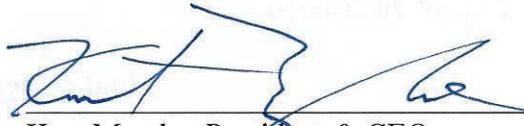
156. The parties acknowledge and agree that final approval by EPA of this CAFO is subject to 40 C.F.R. § 22.45(c)(4) which sets forth requirements under which a person not a party to this proceeding may petition to set aside a consent agreement and final order on the basis that material evidence was not considered.

157. Unless an appeal for judicial review is filed in accordance with Section 311(b)(6)(G) of the CWA, 33 U.S.C. § 1321(b)(6)(G) or 40 C.F.R. § 22.45, this CAFO shall become effective 30 days after the date of issuance, which is the date that the Final Order contained in this CAFO is signed by the Regional Judicial Officer or Regional Administrator. The effective date for this CAFO is thirty days after it is filed with the Regional Hearing Clerk, which is after completion of the notice and comment requirements of Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i) and 40 C.F.R. §§ 22.38, 22.45.

Pri Mar Petroleum Inc, Respondent

05/20/2024

Date



Kurt Marzke, President & CEO
Pri Mar Petroleum, Inc.

United States Environmental Protection Agency, Complainant

Date

**DOUGLAS
BALLOTTI**

Digitally signed by
DOUGLAS BALLOTTI
Date: 2024.05.31
11:35:36 -05'00'

Douglas Ballotti
Director
Superfund and Emergency Management Division
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order
In the Matter of: Pri Mar Petroleum, Inc.
Docket No. CWA-05-2024-0010**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective 30 days after filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

By: _____
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Date: _____