



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 155
Seattle, WA 98101

ENFORCEMENT &
COMPLIANCE ASSURANCE
DIVISION

Reply To: 20-C04

RETURN RECEIPT REQUESTED

Ms. Patricia R. Miller
Operations Project Manager
U.S. Army Corps of Engineers, Portland District
John Day – Willow Creek Project
P.O. Box 823
Rufus, Oregon 97050-0823

Re: **NOTICE OF VIOLATION**
U.S. Army Corps of Engineers – John Day Lock & Dam

Dear Ms. Miller:

The U.S. Environmental Protection Agency (EPA) appreciates the U.S. Army Corps of Engineers (USACE) staff time and cooperation during EPA's July 1, 2021 Spill Prevention, Control, and Countermeasure (SPCC) inspection of the John Day Lock and Dam located within the John Day-Willow Creek Project ("Project") in Rufus, Oregon. EPA also appreciates your staff's time recently in assisting in this EPA inspection follow-up effort.

The purpose of the 2021 SPCC inspection was to determine the Project's compliance with the requirements of the Clean Water Act (CWA) and Oil Pollution Prevention regulations found at 40 C.F.R. Part 112. The SPCC inspection while considered routine, was conducted in part in response to the USACE reported oil discharges that occurred in December 2020 and January 2021. The USACE letter, dated April 21, 2021, to the EPA Regional Administrator, was submitted in accord with the EPA SPCC regulation, 40 C.F.R. § 112.4(a), and it described the oil discharge events, causes of the discharges and the corrective actions and preventative and countermeasures the Project had taken and was taking to minimize the possibilities of recurrence.

By letter dated October 12, 2021, Richard Franklin, EPA SPCC inspector, submitted a copy of the final EPA SPCC Field Inspection and Plan Review Checklist ("Checklist") to Mr. Brett Call, the Project's operations project manager at that time. A summary of the violations and areas of concern found at the time of the SPCC inspection and during SPCC inspection follow-up is enclosed with this Notice of Violation (NOV) and these NOV summaries reflect consideration of the deficiencies, comments and findings from the EPA's 2021 Checklist.

Pursuant to the Oil Pollution Prevention regulations, the Project must have a certified SPCC plan in accordance with the requirements of 40 C.F.R. § 112.7 and, 40 C.F.R. § 112.3(a), must maintain a copy of the plan on site pursuant to 40 C.F.R. § 112.3(e) and must fully implement the plan according to 40 C.F.R. § 112.3(a). Please also note, the discharge of oil into and upon waters of the United States and adjoining shorelines in a quantity that may be harmful as determined by 40 C.F.R. § 110.3, is in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

USACE is requested to respond, in writing, to the NOV findings and to all of the violations and areas of concern summarized in this NOV's enclosure **within 60 days of receipt of this NOV**. Please contact us if additional time is needed to respond to this NOV.

Your NOV response should include descriptions of the causes of the violations and areas of concern and the measures taken, or to be taken, to address the current violations and areas of concern. It should also include any measures taken to prevent future violations. Please include detailed individual descriptions of corrective measures taken to address each of the separate violations and if applicable, each of the areas of concern. Please also include explanations of how any updated and revised SPCC Plan incorporates your corrective measures if any such SPCC Plan is not submitted in accordance with the following NOV response option (i.e., plan cites for incorporation by reference).

Based on the March 2, 2023 conference call with Project staff, EPA understands the Project's 2019 SPCC Plan is undergoing revision. If the revision status of the updated SPCC Plan permits, whether finalized or in substantial draft completion, we encourage USACE to consider submitting a copy of that SPCC Plan in its current status. Include in your responses, applicable plan citations which, by incorporation by reference, may provide the USACE's response to the cited violation or area of concern and a description, even in part, of the applicable corrective actions taken or to be taken.

If a final, professional engineer (PE) certified and Project management approved revised, updated SPCC Plan is not part of the USACE's NOV response, EPA requests USACE notify the EPA compliance officer identified below via email **within 30 days** of when a final, updated PE-certified and management approved SPCC Plan is available and being implemented at the Project and include the dates of PE-certification and USACE management approval in the Project's email notification.

The requests for information included in this NOV and enclosure is made under the authority of Sections 308 and 311(m) of the CWA, 33 U.S.C. §§ 1318, and 1321(m). In accordance with the provisions of 40 C.F.R. § 2.203(b), you may assert a business confidentiality claim covering part or all the information submitted by clearly identifying it as "confidential." If no such claim accompanies the information when it is received by the EPA, it may be made available to the public without further notice to the Project.

If the USACE intends to send large files as part of its NOV responses (i.e., email content and attachments greater than 25 MB), please notify EPA. EPA can accommodate these large file submissions and exchanges. Otherwise, please submit your response letter via email to:

Rick Cool
Compliance Officer
U.S. Environmental Protection Agency
cool.richard@epa.gov

For more information about spill prevention requirements, please visit the EPA's webpage:
<https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations>.

I strongly encourage you to continue your efforts to maintain full knowledge of statutory and regulatory requirements and to respond appropriately to ensure compliance. EPA appreciates the USACE efforts to fully implement a compliant SPCC Plan and in implementing the Project's Oil Accountability Program.

Notwithstanding your response to this NOV, EPA retains all rights to pursue enforcement actions to address these and any other violations. If you have any questions concerning this matter, please do not hesitate to contact Rick Cool, at cool.richard@epa.gov or (206) 553-6223.

Sincerely,

Jeff KenKnight, Chief
Water Enforcement and Field Branch

Enclosure

cc: Mr. Glyn Phelps
Environmental Compliance Coordinator, USACE John Day – Willow Creek Project

Mr. Carson Freels
Environmental & Sustainability Coordinator, USACE Portland District

**ENCLOSURE 1: Summary of SPCC Violations and Areas-of-Concern from the EPA’s
July 21, 2021, SPCC Inspection at the John Day Lock & Dam and EPA Inspection Follow-Up.**

Item Number & SPCC Rule Reference	Plan	Field	Violation Description
1. 112.7 Rule & Plan Cross Reference Provision	X	NA	The SPCC inspection checklist’s Part 112.7 provision states in relevant part: Plan follows sequence of the rule or is an equivalent Plan meeting all applicable rule requirements and includes a cross-reference of provisions. The EPA SPCC inspection checklist comments stated: <i>“The Plan cross-reference has unclear, and incorrect references and citations. More specificity is needed to direct the reviewer to the correct regulatory section.”</i>
2. 112.7(a)(2) Environmental Equivalence Re: Powerhouse Drainage Sump See also Item No. 10 below.	X	NA	Context: This lack-of-environmental equivalence evaluation and determination are directly related to the violations cited for 112.8(b)(3) – (b)(4) for the undiked drainage to the Powerhouse Drainage Sump. See, e.g., Item No. 10 below. The SPCC inspection checklist’s Part 112.7(a)(2) provision states in relevant part: The Plan includes deviations from the requirements of §§112.7(g), (h)(2) and (3), and (i) and applicable subparts B and C of the rule, except the secondary containment requirements in §§112.7(c) and (h)(1), 112.8(c)(2), 112.8(c)(11), 112.12(c)(2), and 112.12(c)(11) If Yes, [does] the Plan state reasons for nonconformance and alternative measures described in detail and provide equivalent environmental protection. Part 112.7(a)(2) requires where the SPCC Plan does not conform to identified listed Part 112 provisions, you must state the reasons for the nonconformance in your SPCC Plan and describe in detail alternate methods and how you will achieve environmental equivalence. The EPA SPCC inspection checklist comments stated: <i>“The Plan does not claim or describe the reason for use of technical deviations or environmental equivalence (EE) for automatic drainage of the Powerhouse Drainage Sump directly to the Columbia River. However, the Plan does provide a description of environmentally equivalent measures in Section 3.3.1 and Section 3.5.1 (esp p.3-12) of the SPCC Plan, whereby a TD-4100 hydrocarbon detector is installed and used to activate an alarm in the Control Room as well as a skimmer that removes oil if oil is detected in the sump. Thus, the facility is apparently using environmental equivalent measures for drainage out of the Powerhouse Drainage Sump; however, no claim of technical deviation or environmental equivalence for this issue are presented in the SPCC Plan.</i> <i>In the Plan, Section 3.5.1 (p. 3-12), it is unclear where the actual detector is located, and implies that it may lie downstream of the sump, where it would monitor effluent from both the Powerhouse Drainage Sump and</i>

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			<i>the Unwatering Sump. During the field inspection, it was also verbally stated that the hydrocarbon detector may have been placed and operating in a pipe or system downstream from, and not actually in the sump. If this is true, then drainage of any oil would be discharged into the waterway before it could be retained or stopped before discharge, and would be inconsistent with 112.8(b) and 112.7(a)(2)."</i> Accordingly, the SPCC Plan fails to include a PE-certified environmental equivalence (EE) evaluation and determination for the apparent nonconformance of the Powerhouse Drainage Sump with 112.8(b)(3) – (b)(4). The SPCC Plan does not explain the reasons for the non-conformance and a detailed EE evaluation and determination of EE.
3. 112.7(a)(3)(v) Disposal Methods	X	NA	The SPCC inspection checklist's Part 112.7(a)(3)(v) provisions state in relevant part: Plan addresses each of the following . . . (v) Methods of disposal of recovered materials in accordance with applicable legal requirements The EPA SPCC inspection checklist comments stated: <i>"The SPCC Plan is missing a detailed disposal plan describing methods of disposal of recovered materials in accordance with applicable legal requirements."</i>
4. 112.7(a)(4) Oil Discharge Reporting Elements	X	NA	The SPCC inspection checklist's Part 112.7(a)(4) provisions state in relevant part: The Plan must include information and procedures that enable a person reporting an oil discharge as described in §112.1(b) to relate information on the: ☐ Exact address or location and phone number of the facility; ☐ Date and time of the discharge; ☐ Type of material discharged; ☐ Estimates of the total quantity discharged; ☐ Estimates of the quantity discharged as described in §112.1(b); ☐ Source of the discharge; ☐ Description of all affected media; ☐ Cause of the discharge; ☐ Damages or injuries caused by the discharge; ☐ Actions being used to stop, remove, and mitigate the effects of the discharge; ☐ Whether an evacuation may be needed; and ☐ Names of individuals and/or organizations who have also been contacted. The EPA SPCC inspection checklist comments, Att. E., stated: <i>"The SPCC Plan does not have all reporting elements required by 112.7(a)(4). Further, there are two separate, but different reporting</i>

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			<i>forms/logs located in different sections of the Spill Response Plan, which may lead to confusion during reporting. Specifically, the SPCC Plan has two different lists of numbers to call and checklists to follow in the event of a spill. One list of numbers and checklist is located in Annex 1 (page 24) of the Spill Response Plan, Appendix B to the SPCC Plan. The second, different list and checklist is located in Appendix C to the SPCC Plan. It is not clear which list of numbers and checklist is to be used in the event of a spill. Furthermore, page 10-4 of the SPCC Plan contains requirements and elements to report that are not consistent with the Spill Response Plan reporting forms in Appendix C.”</i>
5. 112.8(b)(3) & (b)(4) Undiked Area Drainage 112.7(c) General Secondary Containment Re: North Fish Pump Room	X	X	As summarized in the EPA SPCC Inspection Checklist, § 112.8(b)(3) and (b)(4) provide the facility must have drainage from undiked areas with a potential for discharge designed to flow into ponds, lagoons, or catchment basins to retain oil or return it to facility. Catchment basin must located away from flood areas; and if facility drainage is not engineered as in (b)(3) (i.e., drainage flows into ponds, lagoons, or catchment basins) then the facility is equipped with a diversion system to retain oil in the facility in the event of an uncontrolled discharge. The SPCC inspection checklist’s Part 112.7(c) general secondary containment provisions state in part: Appropriate containment and/or diversionary structures or equipment are provided to prevent a discharge as described in §112.1(b), except as provided in §112.7(k) of this section for certain qualified operational equipment. The entire containment system, including walls and floors, are capable of containing oil and are constructed to prevent escape of a discharge from the containment system before cleanup occurs. The method, design, and capacity for secondary containment address the typical failure mode and the most likely quantity of oil that would be discharged. [The provision goes on to list various general secondary containment examples for onshore facilities.] The EPA SPCC inspection checklist comments stated: <i>“Numerous small hydraulic oil spills and staining were observed at the hydraulic oil accumulator tanks and pumps in the North Fish Pump Room (Auxiliary Water Supply Chamber) (refer to Photographs 4 through 6), which have no secondary containment. Facility representatives stated that these accumulator tanks regularly leak and then drain down through a grated walkway to the North Fishway Attraction Pump Chamber located directly below the North Fish Pump Room. The North Fishway Attraction Pump Chamber contains a level float sump, which automatically activates and discharges directly to the Columbia River without any facility manual inspection of the effluent for</i>

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			<i>sheen or other physical characteristics on the surface of the water prior to discharge to the river.”</i> Additional EPA Comment & Recommendation: Based on a March 2, 2023, conference call with Project staff, it is EPA’s understanding the Project now deploys absorbents to this area as needed; that spill containment pallets have been placed under the accumulator tanks and the area is subject to increased routine visual inspections. EPA recommends for the Project’s consideration that any revised, updated SPCC Plan describe the various secondary containment methods, equipment, procedures, etc. that have been installed, implemented, etc. at locations like the North Fish Pump Room situation described in the above cited violations.
6. 112.7(c) General Secondary Containment Re: Navigation Drainage Sump Pump area equipment	NA	X	The SPCC inspection checklist’s Part 112.7(c) general secondary containment provisions state in part: Appropriate containment and/or diversionary structures or equipment are provided to prevent a discharge as described in §112.1(b), except as provided in §112.7(k) of this section for certain qualified operational equipment. The entire containment system, including walls and floors, are capable of containing oil and are constructed to prevent escape of a discharge from the containment system before cleanup occurs. The method, design, and capacity for secondary containment address the typical failure mode and the most likely quantity of oil that would be discharged. [The provision goes on to list various general secondary containment examples for onshore facilities.] The EPA SPCC inspection checklist comments stated: <i>“The inspectors observed greasy equipment and hydraulic oil staining on the ground under the pump lubrication dripper for pump 3A for the Navigation Drainage Pump Sump (refer to Photographs 7 and 8). This pump and lubrication equipment was observed without secondary containment, approximately three feet away from the Columbia River at the edge of the walkway.”</i>
7. 112.7(e) Inspections, Tests and Records	X	NA	The SPCC inspection checklist’s Part 112.7(e) inspections, tests and records provisions state in part: • Inspections and tests conducted in accordance with written procedures; • Record of inspections or tests signed by supervisor or inspector; • Kept with Plan for at least 3 years. The EPA SPCC inspection checklist comments stated:

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			<i>“The SPCC Plan does not describe that records of tests or inspections are to be signed by a supervisor or inspector. The plan does say that logbooks of inspections will be maintained.”</i>
8. See Area of Concern in re 112.7(f)(1) Spill Prevention Training Below.			See Item No. 8 Area of Concern below.
9. 112.7(f)(3) Annual Discharge Prevention Briefings	X	NA	The SPCC inspection checklist’s Part 112.7(f)(3) personnel, training and discharge prevention procedures provisions state in part: Discharge prevention briefings conducted at least once a year for oil handling personnel to assure adequate understanding of the Plan. Briefings highlight and describe known discharges as described in §112.1(b) or failures, malfunctioning components, and any recently developed precautionary measures. The EPA SPCC inspection checklist comments stated: <i>“Section 12.3 of the SPCC Plan (page 12-2) does not describe that spill prevention briefings will include required discussions of known past discharges or failures at the facility.”</i>
10. 112.8(b)(3) & (b)(4) Undiked Area Drainage Re: Drainage Areas to Powerhouse Drainage Sump See also Item No. 2 above.	NA	X	As summarized in the EPA SPCC Inspection Checklist, § 112.8(b)(3) and (b)(4) provide the facility must have drainage from undiked areas with a potential for discharge designed to flow into ponds, lagoons, or catchment basins to retain oil or return it to facility. Catchment basin must located away from flood areas; and if facility drainage is not engineered as in (b)(3) (i.e., drainage flows into ponds, lagoons, or catchment basins) then the facility is equipped with a diversion system to retain oil in the facility in the event of an uncontrolled discharge. The EPA SPCC inspection checklist comments state in part: <i>“Drainage from undiked areas flow to a large drainage sump which automatically pumps water (not manually) and potentially any spilled oil to the river. However, the facility is apparently utilizing Environmental Equivalence (unclaimed) to attempt to satisfy this portion of the regulation by utilizing a process described in Section 3.3.1 and 3.5.1 (p 3-12.).”</i>
11.	X	NA	The SPCC inspection checklist’s Part 112.8(c)(1) bulk storage container material and construction provisions state in part:

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112.8(c)(1) Bulk Storage Container Materials & Construction			Containers materials and construction are compatible with material stored and conditions of storage such as pressure and temperature. The EPA SPCC inspection checklist comments state: <i>“The SPCC Plan does not describe bulk storage container materials and construction, nor does it describe their compatibility with materials stored and conditions of storage.”</i>
12. 112.8(c)(6) Personnel Qualifications and Inspection of Container Supports & Foundations	X	NA	The applicable provisions of the SPCC inspection checklist’s Part 112.8(c)(6) provisions state in part: • Appropriate qualifications for personnel performing tests and inspections are identified in the Plan and have been assessed in accordance with industry standards • Container supports and foundations regularly inspected. The EPA SPCC inspection checklist comments state: <i>“Neither Section 8 of the SPCC Plan (page 8-1 through 8-5) nor Appendix K (Inspection Checklists) identify appropriate qualifications for personnel performing tests and inspections or state that qualifications have been assessed in accordance with industry standards.</i> <i>Additionally, neither Section 8 nor Appendix K state that container supports and foundations are regularly inspected.”</i>
13. 112.8(c)(4) Buried Tanks	X	NA	The SPCC inspection checklist’s applicable Part 112.8(c)(4) provisions state: For completely buried metallic tanks installed on or after January 10, 1974 (if not exempt from SPCC regulation because subject to all of the technical requirements of 40 CFR part 280 or 281): • Provide corrosion protection with coatings or cathodic protection compatible with local soil conditions. • Regular leak testing conducted. The EPA SPCC inspection checklist comments state: <i>“Although the SPCC Plan describes the buried storage tanks located at the outdoor fuel transfer area (refer to Photograph 29). There is no obvious secondary containment measure here, however, a spill kit located in the shed behind the fuel transfer area can be used as active containment. Some Corps personnel were not aware of its location. EPA recommends that a sign be placed on the shed behind the fuel transfer area indicating the location of a spill kit.”</i> Additional EPA Comment: Typical SPCC-regulated fuel transfer areas (not loading/unloading racks) like that pictured in EPA Photograph 29 are subject to general secondary containment provisions under 112.7(c).

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			<i>See also</i> Additional EPA Comment & Recommendation under Item No. 14 below on determination of whether the USTs themselves are regulated by the Oregon Department of Environmental Quality under an EPA-approved, state implemented Parts 280/281 UST program.
14. 112.8(d)(1), (d)(2) and (d)(4) Facility Transfer Operations, Pumping & Facility Process	X	NA	The SPCC inspection checklist's applicable Part 112.8(d) provisions state: <u>(d)(1):</u> - Buried piping installed or replaced on or after August 16, 2002 has protective wrapping or coating. - Buried piping installed or replaced on or after August 16, 2002 is also cathodically protected or otherwise satisfies corrosion protection standards for piping in 40 CFR part 280 or 281. - Buried piping exposed for any reason is inspected for deterioration; corrosion damage is examined; and corrective action is taken. <u>(d)(2):</u> - Piping terminal connection at the transfer point is marked as to origin and capped or blank-flanged when not in service or in standby service for an extended time. <u>(d)(4) – (relevant part):</u> - Integrity and leak testing conducted on buried piping at time of installation, modification, construction, relocation, or replacement. The EPA SPCC inspection checklist comments state: <i>“The SPCC Plan did not describe procedures for protective coatings or cathodic protection for buried piping at the facility. The SPCC Plan did not state that buried piping would be inspected for deterioration or corrosion when exposed or repaired for deterioration.</i> <i>The SPCC Plan did not state that piping terminal connections would be blank-flanged when not in service.</i> <i>Furthermore, the SPCC Plan did not state or describe that integrity and leak testing would be conducted on buried piping at the time of installation, modification, construction, relocation, or replacement.”</i> Additional EPA Comment & Recommendation: This EPA comment and recommendation are not applicable to Part 112.8(d)(2). Subject to check and confirmation by the Project and its PE, the 2019 SPCC Plan, Sections 6.2.1 and 7.1, appears to indicate the only Project buried piping is associated with the two underground storage tanks (USTs) used with the fueling dispensers in the Service Yard. EPA recommends for the Project's consideration that it and its PE determine whether the USTs and the associated buried piping is regulated by the Oregon Department of

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			Environmental Quality under an EPA-approved, state implemented Parts 280/281 UST program and take into consideration any such determination in any SPCC Plan revisions. EPA recommends the SPCC Plan clearly describe, if applicable, the Project's determinations and suggests the descriptions include what types of regulatory inspections, tests, etc. are conducted and when on any such buried piping.
Area(s) of Concern			Description of Area(s) of Concern
8. 112.7(f)(1) Discharge Prevention Training - Oil Handling Personnel	NA	X	The EPA SPCC inspection checklist comments stated: <i>“Although the facility did conduct field training exercises in 2018 and 2019, the facility is not currently conducting spill response training exercises annually as described in Section 13.2 (page 17) of the Spill Response Plan, Appendix B to the SPCC Plan. COVID-19 may have caused recent delays in implementing these exercises. These annual exercises need to be implemented as stated in the Plan.”</i> Additional EPA Comment & Recommendation: Based on a March 2, 2023 conference call with Project staff, it is EPA's understanding the Project has implemented spill prevention training since the July 2021 SPCC inspection and described various recent training sessions. EPA recommends the Project consider describing any applicable 112.7(f)(1) related training efforts for oil-handling personnel since the July 2021 SPCC inspection in any formal Project response to the NOV.