

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

GUNDIES, INC.

Bellingham, Washington

Respondent.

DOCKET NO. CWA-10-2026-0233

CONSENT AGREEMENTProceedings Under Section 311(b)(6) of the
Clean Water Act, 33 U.S.C. § 1321(b)(6)**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 311(b)(6) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6).

1.2. Pursuant to CWA Section 311(b)(6)(A), the EPA is authorized to assess a civil penalty against any owner, operator, or person in charge of an onshore facility who fails or refuses to comply with any regulation issued under CWA Section 311(j), 33 U.S.C. § 1321(j).

1.3. CWA Section 311(b)(6)(B), 33 U.S.C. § 1321(b)(6)(B), authorizes the administrative assessment of Class I civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$25,000. Pursuant to the 2015 amendments to the Federal Civil Penalty Inflation Adjustment Act, 28 U.S.C. § 2461, and 40 C.F.R. Part 19, the administrative assessment of Class I civil penalties may not exceed \$23,647 per day for each day during which the violation continues, up to a maximum penalty of \$59,114. *See also* 90 Fed. Reg. 1375 (January 8, 2025) (2025 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Section 311(b)(6)(A) and (b)(6)(B), 33 U.S.C. § 1321(b)(6)(A) and (B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, the EPA issues, and

GUNDIES, INC. (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between the EPA and the party against whom a penalty is proposed to be assessed pursuant to CWA Section 311(b)(6), 33 U.S.C. § 1321(b)(6), to the Regional Administrator of the EPA Region 10, who has redelegated this authority to the Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (Complainant).

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CWA together with the specific provisions of the CWA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Framework

3.1. The objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

3.2. CWA Section 311(j), 33 U.S.C. § 1321(j), provides for the regulation of onshore facilities to prevent or contain discharges of oil. CWA Section 311(j)(1)(C), 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 ... from onshore facilities ... and to contain such discharges”

3.3. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777

(October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to the EPA his Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation related onshore facilities.

3.4. Pursuant to these delegated statutory authorities and pursuant to its authorities under the CWA, 33 U.S.C. § 1251 *et seq.*, to implement Section 311(j) the EPA promulgated the Oil Pollution Prevention regulations in 40 C.F.R. Part 112, which set forth procedures, methods and equipment and other requirements to prevent the discharge of oil from non-transportation-related onshore facilities into or upon the navigable waters of the United States or adjoining shorelines, including requirements for preparation and implementation of a Spill Prevention Control and Countermeasure (SPCC) Plan.

3.5. The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products, which due to their location, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines. 40 C.F.R. § 112.1.

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

3.7. In the case of an onshore facility, the regulations define “owner or operator” to include any person owning or operating such onshore facility. 40 C.F.R. § 112.2.

3.8. The regulations define “person” to include any individual, firm, corporation, association, or partnership. 40 C.F.R. § 112.2.

3.9. “Non-transportation-related,” as applied to an on-shore facility is defined to

include industrial, commercial, agricultural or public facilities which use and store oil. 40 C.F.R. § 112 App. A.

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

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

3.12. Owners or operators of onshore facilities that have an aboveground storage capacity of more than 1,320 gallons of oil, and due to their location could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, must prepare an SPCC Plan in writing, certified by a licensed Professional Engineer, and in accordance with the requirements of 40 C.F.R. § 112.7. 40 C.F.R. § 112.3.

General Allegations

3.13. Respondent is a corporation organized under the laws of the State of Washington and a “person” under CWA Section 311(a)(7), 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

3.14. At all times relevant to this Consent Agreement, Respondent was the “owner or operator,” within the meaning of 40 C.F.R. § 112.2 and Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), of an auto recycling facility located at 3940 E Sunset Drive in Bellingham, Washington (Facility).

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

3.16. The Facility is “non-transportation-related” within the meaning of 40 C.F.R. Part 112, Appendix A.

3.17. On November 28, 2023, the EPA sent Respondent a CWA Information Request (Information Request). Respondent submitted its response to the EPA's CWA information request on March 1, 2024.

3.18. Respondent's response to the Information Request indicated that it had an aggregate, above ground storage capacity greater than 1,320 gallons of oil in containers, each with a shell capacity of at least 55 gallons.

3.19. One or more discharge points at the Facility discharge to the City of Bellingham's stormwater system, which flows to Toad Creek, which is a perennial tributary of Squalicum Creek, which empties into Bellingham Bay in the Salish Sea.

3.20. Accordingly, the Facility is a non-transportation-related, onshore facility that, due to location, could reasonably have been expected, at the time of Respondent's response to the CWA information request, to discharge oil into or upon the navigable waters of the United States or adjoining shorelines in harmful quantities. The Facility is therefore subject to the regulations at 40 C.F.R. Part 112.

Violation

Failure to Prepare and Implement a Spill Prevention, Control and Countermeasure Plan

3.21. Paragraphs 3.1 through 3.20 are realleged and incorporated herein by reference.

3.22. Pursuant to 40 C.F.R. § 112.3, any owner or operator of an onshore or offshore facility subject to the Oil Pollution Prevention Regulations must prepare in writing and implement a SPCC Plan, in accordance with 40 C.F.R. § 112.7 and any other applicable section.

3.23. At the time of submitting its response to the Information Request, Respondent stored used oil, gasoline, and diesel at the Facility. Respondent's response to the Information Request indicated that the Facility's total oil storage capacity in containers that are equal to or

greater than 55 gallons was approximately 1,460 gallons.

3.24. Respondent, an owner and operator of the non-transportation facility that had the capacity to store more than 1,320 gallons of oil, was subject to the Oil Pollution Prevention Regulations at the Facility.

3.25. Pursuant to 40 C.F.R. § 112.3, Respondent was required to prepare in writing and implement an SPCC Plan at the Facility, in accordance with 40 C.F.R. § 112.7 and any other applicable section.

3.26. EPA's Information Request asked Respondent to provide copies of all SPCC plan documents and approvals for the Facility. Respondent did not provide an SPCC Plan. Respondent failed to prepare in writing and implement a SPCC plan in violation of 40 C.F.R. § 112.3.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by CWA Section 311(b)(8), 33 U.S.C. § 1321(b)(8), EPA has taken into account the seriousness of the alleged violations; Respondent's economic benefit of noncompliance; the degree of culpability involved; any other penalty for the same incident; any history of prior violations; the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge; the economic impact of the penalty on the violator; and any other matters as justice may require. After considering all of these factors, EPA has determined that an appropriate penalty to settle this action is \$22,900 (Assessed Penalty).

4.4. Respondent consents to the assessment of the Assessed Penalty set forth in Paragraph 4.3 and agrees to pay the total Assessed Penalty within 30 days after the date of the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk (Filing Date).

4.5. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, to the “Oil Spill Liability Trust Fund”, as provided on the EPA How to Make a Payment website:

<https://www.epa.gov/financial/makepayment>. For additional instructions see:

<https://www.epa.gov/financial/additional-instructions-making-payments-epa>. When making a payment, Respondent shall:

4.5.1. Identify every payment with Respondent’s name and the docket number of this Agreement, CWA-10-2026-0233.

4.5.2. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of payment electronically to the following person(s):

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
R10_RHC@epa.gov

Stacey Kim
U.S. Environmental Protection Agency, Region 10
kim.stacey@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA

requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

4.6. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C. § 1321(b)(6)(H), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and the EPA is authorized to recover the following amounts.

4.6.1. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C.

§ 1321(b)(6)(H). The rate of interest is the IRS standard underpayment rate.

4.6.2. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of collection proceedings.

4.6.3. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.

4.7. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Consent Agreement, the EPA may take additional actions. Such actions the EPA may take include, but are not limited to, the following.

4.7.1. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.

4.7.2. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for,

a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

4.7.3. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs the EPA sponsors or funds, per 40 C.F.R. § 13.17.

4.7.4. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 33 U.S.C. § 1321(b)(6)(H). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

4.9. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III above.

4.12. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.13. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order. By signing this Consent Agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the Consent Agreement.

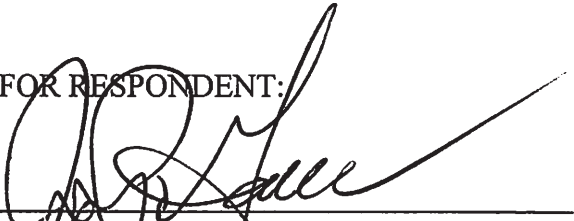
4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15. The above provisions are STIPULATED AND AGREED upon by Respondent and the EPA Region 10.

DATED:

8/10/26

FOR RESPONDENT:


Pete Gunderson, President
GUNDIES, INC.

FOR COMPLAINANT:

EDWARD
KOWALSKI

Digitally signed by EDWARD
KOWALSKI
Date: 2026.08.11 14:47:49 -07'00'

Edward J. Kowalski
Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

GUNDIES, INC.

Bellingham, Washington

Respondent.

DOCKET NO. CWA-10-2026-0233

FINAL ORDER

Proceedings Under Section 311(b)(6) of the
Clean Water Act, 33 U.S.C. § 1321(b)(6)

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.

2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

3. The Consent Agreement and this Final Order constitute a settlement by the EPA of all claims for civil penalties pursuant to the Clean Water Act (CWA) for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

4. This Final Order shall become effective upon filing.

IT IS SO ORDERED.

**RICHARD
MEDNICK**

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Digitally signed by RICHARD MEDNICK
Date: 2026.08.12 09:51:43 -07'00'

CERTIFICATE OF SERVICE

I certify that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: GUNDIES, INC., Docket No.: CWA-10-2026-0233**, was filed with the Regional Hearing Clerk; and that a true and correct copy was served on the date specified below to the following addresses via electronic mail:

Melanie Shepherdson
U.S. Environmental Protection Agency
Region 10
Shepherdson.melanie@epa.gov

Pete Gunderson
President
GUNDIES, INC.
brad.doll@foster.com

SALEE
PORTER

 Digitally signed by SALEE
PORTER
Date: 2026.08.12 10:13:50
-07'00'

Regional Hearing Clerk
EPA Region 10