

US EPA ARCHIVE DOCUMENT

(b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 CFR §110.3 to include discharges of oil that cause a film or a 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 the adjoining shorelines.

7. On or about February 18, 2011, Respondent discharged 111 barrels of oil as defined in Section 311(a)(1) of the Act, 33 U.S.C. §1321(a)(1), and 40 CFR §110.1, from its facility into or upon the One Hundred and Two River or adjoining shorelines.

8. The One Hundred and Two River is a navigable water of the United States as defined in Section 502(7) of the Act, 33 U.S.C. §1362(7), and 40 CFR §110.1.

9. Respondent's February 18, 2011, discharge of oil from its facility caused a sheen upon or discoloration of the surface of the One Hundred and Two River, and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R §110.3, which implements Sections 311(b)(3) and (b)(4) of the Act.

10. Respondent's February 18, 2011, discharge of oil from its facility into or upon the One Hundred and Two River or adjoining shorelines, in a quantity that has been determined may be harmful under 40 CFR §110.3, violated Section 311(b)(3) of the Act.

CONSENT AGREEMENT

11. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

12. Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

13. Respondent neither admits nor denies the factual allegations and legal conclusions set forth above.

14. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this CAFO.

15. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

16. This CAFO addresses all civil claims for the alleged CWA violations identified above. Complainant reserves the right to take enforcement action with respect to any other violations of the CWA or other applicable law.

17. Respondent certifies by the signing of this CAFO that to the best of its knowledge, Respondent's facility is in compliance with all requirements of the Clean Water Act and all regulations promulgated thereunder.
18. The effect of settlement described in paragraph 16 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 17, above, of this CAFO.
19. Nothing contained in this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.
20. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.
21. Respondent consents to the payment of a civil penalty of \$29,300 as set forth in paragraph 1 of the Final Order.
22. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due shall cause the entire civil penalty assessed to be due and owing, and may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate, together with any late charges and handling charges which may be authorized by statute.

FINAL ORDER

Pursuant to the authority of Section 311 of the CWA, 33 U.S.C. § 1321, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Twenty-Nine Thousand Three Hundred Dollars (\$29,300), payable in four quarterly installment payments of Seven Thousand Three Hundred and Fifty-Eight Dollars and Seventy Cents (\$7,358.70), with a total of One Hundred and Eighty-Four Dollars and Eighty Cents interest assessed (\$134.80), for a total civil penalty of Twenty-Nine Thousand Four Hundred and Thirty Four Dollars and Eighty Cents (\$29,434.80) payable within 365 days of entry of this Final Order. Payments shall be by cashier's or certified check made payable to the "Environmental Protection Agency – OSLTF – 311" and remitted to:

United State Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000.

2. The payments shall identify Respondent by name and docket number (CWA-07-2012-0023). Copies of the checks shall be mailed to:

Regional Hearing Clerk
United States Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101

and to:

Kristen Nazar
Assistant Regional Counsel
United States Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date _____ By _____
Becky Weber
Director
Air and Waste Management Division

Date _____ By _____
Kristen Nazar
Assistant Regional Counsel
Office of Regional Counsel

RESPONDENT:
CARBOLYTIC MATERIALS COMPANY, LLC

By _____

Title _____

Date _____

IT IS SO ORDERED. This Final Order shall become effective immediately.

Date _____ By _____
ROBERT L. PATRICK
Regional Judicial Officer

Date _____