

US EPA ARCHIVE DOCUMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
Cargill, Incorporated	)	CONSENT AGREEMENT
	)	AND FINAL ORDER
Blair, Nebraska	)	
Eddyville, Iowa	)	
	)	
Respondent.	)	Docket No. CWA-07-2014-0082
	)	
	)	

The United States Environmental Protection Agency ("EPA"), Region 7 ("Complainant") and Cargill Corn Milling North America, a business unit of Cargill Incorporated, ("Cargill" or "Respondent") have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This is a "Class II" administrative action for the assessment of civil penalties initiated pursuant to Section 311 of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA"), 33 U.S.C. § 1321, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated Sections 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), and regulations promulgated thereunder at 40 C.F.R. Part 112 for the requirements for Facility Response Plans ("FRP") at facilities located at or near Blair, Nebraska and Eddyville, Iowa ("Facilities").

A. ALLEGATIONS

Parties

3. The authority to take action under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6) is vested in the Administrator of EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated it to the Director of the Air and Waste Management Division of EPA, Region 7 (Complainant).

4. Respondent is a corporation registered and authorized to conduct business in the States of Iowa and Nebraska.

Statutory and Regulatory Framework

Section 311 of the CWA

5. Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), provides that the President shall issue regulations requiring the owner or operator of “an onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or upon the navigable waters [or] adjoining shorelines” to “submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil.” Under the authority of Section 311(j)(5) of the CWA, EPA promulgated regulations for facilities required to have such response plans that are found at Subparts A and D of 40 C.F.R. Part 112 (“the Facility Response Plan” or “FRP regulations”).

6. 40 C.F.R. § 112.2 sets forth definitions applicable to the FRP program and states “Oil means oil of any kind or in any form, including, but not limited to: fats, oils, or greases of animal, fish, or marine mammal origin; vegetable oils, including oils from seeds, nuts, fruits, or kernels; and, other oils and greases, including petroleum, fuel oil, sludge, synthetic oils, mineral oils, oil refuse, or oil mixed with wastes other than dredged soil.”

7. 40 C.F.R. § 112.20(f)(1) establishes criteria for determining whether a facility is subject to the FRP requirements by evaluating whether the discharge of oil from a facility could reasonably be expected to cause substantial harm. The “substantial harm” criteria set forth at 40 C.F.R. § 112.20(f)(1) include, but are not limited to, facilities with oil storage capacity of greater than or equal to 1 million gallons, and where a discharge from the facility has the potential to cause injury to fish and wildlife and sensitive environments (as defined at 40 C.F.R. § 112.2, hereafter “sensitive environments”).

8. Pursuant to 40 C.F.R. § 112.20(a), facilities that are subject to the FRP program are required to prepare a FRP, as specified in 40 C.F.R. § 112.20(h), and submit the FRP to EPA (This requirement has been effective since August 30, 1994).

9. The requirements for preparedness and response for FRP regulated facilities are set forth at 40 § C.F.R. 112.20(h) and include, but are not limited to, the following:

- a. the requirement to contain an emergency response action plan (40 C.F.R. § 112.20(h)(1));
- b. the requirement to include emergency response information, including the identity of private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge and other discharges of oil (40 C.F.R. § 112.20(h)(3)(i));
- c. evidence of contracts or other approved means for ensuring the availability of private response personnel and equipment (40 C.F.R. § 112.20(h)(3)(ii));
- d. the requirement for a hazard evaluation that includes a discussion of the facility's known or reasonably identifiable history of discharges reportable under 40 C.F.R. Part 110 for the entire life of the facility and that identifies areas within the facility where discharges could occur and what the potential effects of the discharges would be on the affected environment (40 C.F.R. § 112.20(h)(4));
- e. a discussion of different specific planning scenarios, including planning to respond to a "worst case discharge" equal to the volume of the largest storage container at the facility (40 C.F.R. § 112.20(h)(5));
- f. a description of the procedures and equipment used to detect discharges (40 C.F.R. § 112.20(h)(6));
- g. the identification of specific response actions to be carried out by facility personnel or contracted personnel under the response plan to ensure the safety of the facility and to mitigate or prevent discharges, or the substantial threat of such discharges (40 C.F.R. § 112.20(h)(7)); and
- h. the requirement for the development and documentation of inspections, a drill/exercise program, and a description of a response training program (40 C.F.R. § 112.20(h)(8)).

10. 40 C.F.R. § 112.21(a) states that the owner or operator of a FRP regulated facility is required to develop, document and implement a facility inspection program, a response training program and a drill/exercise program that satisfies the requirements of 40 C.F.R. § 112.21(h)(8).

11. Section 311(j)(5)(F)(ii) of the CWA, 33 U.S.C. § 1321(j)(5)(F)(ii) establishes the prohibition that an owner and/or operator of a facility required to submit a FRP to EPA "may not handle, store, or transport oil unless...the vessel or facility is operating in compliance with the plan."

Factual Background

12. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.

Blair, Nebraska Facility

13. At all times relevant to the allegations in this Complaint, Respondent was the “owner or operator,” 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, of the corn milling facility addressed at 650 Industrial Park Drive, Blair, Nebraska (“Blair facility”).

14. The Cargill Blair facility has a documented maximum oil storage capacity of 4,668,268 gallons of “oil,” as defined at 40 C.F.R. § 112.2, with the largest storage tank having a maximum capacity of 1,730,689 gallons of denatured ethanol. Facility oil storage also includes corn oil and refined petroleum oil products (natural gasoline, gasoline and diesel).

15. The Missouri River is a navigable water of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 112.2, and a discharge from the Blair facility would reasonably be expected to impact the Missouri River.

16. The Cargill Blair facility is directly adjacent to the Missouri River. A worst case discharge from the Blair facility would reasonably be expected to impact “wetlands,” which are an identified sensitive environment.

Eddyville, Iowa Facility

17. At all times relevant to the allegations in this Complaint, Respondent was the “owner or operator,” 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, of the corn milling facility addressed at 17540 Monroe-Wapello Road, Eddyville, Iowa 52533 (“Eddyville facility”).

18. The Eddyville facility has a documented maximum oil storage capacity of 2,431,893 gallons of “oil,” as defined at 40 C.F.R. § 112.2, with the largest storage tank containing 960,000 gallons of corn oil. Other oils stored on-site include denatured ethanol and refined petroleum oil products (natural gasoline, gasoline and diesel).

19. The Des Moines River is a navigable water of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 112.2, and a discharge from the Eddyville facility would reasonably be expected to impact the Des Moines River.

20. The Cargill Eddyville facility is less than 1/2 mile from the Des Moines River. A worst case discharge from the Eddyville facility would reasonably be expected to impact “wetlands,” which are an identified sensitive environment, as defined at 40 C.F.R. 112.2.

General Allegations

21. Respondent's Blair and Eddyville facilities are each an "onshore facility" within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

22. Respondent's Blair and Eddyville facilities are each a "non-transportation-related facility" as defined by Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.

23. Respondent's Blair and Eddyville facilities each have storage capacity of greater than 1 million gallons of "oil," as defined by 40 C.F.R. § 112.2.

24. Respondent's Blair and Eddyville facilities, because of their locations, could each reasonably be expected to cause "substantial harm" to the environment if a discharge of oil occurred into or on navigable waters or adjoining shorelines, as defined by 40 C.F.R. § 112.20(f)(1), and therefore, the Facilities are, and have been, subject to Section 311(j)(5) of the CWA and the FRP program regulations set forth at 40 C.F.R. Parts 112.20 and 112.21.

25. In February 2013, EPA, Region 7 visited Cargill's Blair facility. In April 2013, EPA visited Cargill's Eddyville Facility. After EPA's visit, by letter dated April 24, 2013, Cargill submitted a draft FRP for the Eddyville facility.

26. Following the site visits described above, EPA, Region 7 initiated negotiations with Respondent regarding the Facilities' compliance with the FRP program which has resulted in this Consent Agreement and Final Order. On June 18, 2014, Respondent submitted to EPA, Region 7 signed and effective FRPs for both the Blair and Eddyville facilities.

Alleged Violations

Violations of FRP Requirements at Blair, Nebraska Facility

27. The allegations stated in Paragraphs A.12 through A.26, above, are hereby incorporated by reference.

28. Prior to Respondent's June 18, 2014 submittal of the FRP for the Blair facility, Respondent's failure to prepare and submit a FRP to EPA, was a violation of 40 C.F.R. § 112.20 and the related appendices, and Section 311(j)(5) of the CWA.

29. Prior to Respondent's June 18, 2014 submittal of the FRP for the Blair facility, Respondent failed to develop, document and/or implement an inspection program, a facility response training program and/or a drill/exercise program that satisfied the requirements of 40 C.F.R. § 112.20(h)(8), and therefore, was in violation of 40 C.F.R. § 112.21.

30. Prior to Respondent's June 18, 2014 submittal of the FRP for the Blair facility, Respondent's storage of oil at the facility was not in compliance with an existing FRP, and therefore such oil storage was in violation of the prohibition set forth at Section 311(j)(5)(F)(ii) of the CWA.

Violations of FRP Requirements at Eddyville, Iowa Facility

31. The allegations stated in Paragraphs A.12 through A.26, above, are hereby incorporated by reference.

32. Prior to Respondent's June 18, 2014 submittal of the FRP for the Eddyville facility, Respondent's failure to prepare and submit a FRP to EPA, was a violation of 40 C.F.R. § 112.20 and the related appendices, and Section 311(j)(5) of the CWA.

33. Prior to Respondent's June 18, 2014 submittal of the FRP for the Eddyville facility, Respondent failed to develop, document and/or implement an inspection program, a facility response training program and/or a drill/exercise program that satisfied the requirements of 40 C.F.R. § 112.20(h)(8), and therefore, was in violation of 40 C.F.R. § 112.21.

34. Prior to Respondent's June 18, 2014 submittal of the FRP for the Eddyville facility, Respondent's storage of oil at the facility was not in compliance with an existing FRP, and therefore such oil storage was in violation of the prohibition set forth at Section 311(j)(5)(F)(ii) of the CWA.

Relief

35. Based on the foregoing Alleged Violations, and pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1311(b)(6), EPA, Region 7 hereby proposes to issue a Final Order assessing an administrative penalty against the Respondent, for the violations cited above, in the amount of \$187,500 (plus any applicable interest).

B. CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

2. Respondent admits only the jurisdictional allegations of this Consent Agreement and Final Order, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and Final Order.

3. Respondent neither admits nor denies the remaining specific factual allegations and alleged violations set forth in this Consent Agreement and Final Order.

4. 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 this Consent Agreement and Final Order.

5. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and agree to each bear their own costs and attorneys' fees incurred as a result of this action.

6. This Consent Agreement and Final Order addresses all civil and administrative claims for the CWA violations identified in Paragraphs A.27 through A.34, as alleged above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

7. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

8. The undersigned representative of the Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind the Respondent to the terms contained herein.

9. Respondent certifies, that as of the date that it executes this Consent Agreement and Final Order, that it is in compliance with the requirements of 40 C.F.R. Parts 112.20 and 112.21, and Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), for Respondent's Blair and Eddyville facilities.

10. The effect of settlement described in Paragraph B.6, above, is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph B.9, above, of this Consent Agreement and Final Order.

11. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a CWA penalty of \$187,500, plus any applicable interest, as set forth in Paragraphs B.12 to B.15, below.

12. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due 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.

Payment Procedures

13. Within thirty (30) days of the Effective date of the Final Order, Respondent shall pay a total civil penalty of One Hundred Eighty Seven Thousand, Five Hundred Dollars (\$187,500), plus any applicable interest, according to the terms below. This payment shall reference the Docket No. CWA- 07-2014-0082 and shall be made by cashier or certified check made payable to the "Environmental Protection Agency – OSLTF-311" and remitted to:

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

14. The Respondent shall reference the Docket Number CWA-07-2014-0082 and **In the Matter of Cargill, Incorporated** on the check. Copies of the check shall be mailed to:

Regional Hearing Clerk
United States Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and

Howard Bunch
Office of Regional Counsel
United States Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

15. No portion of the civil penalty or any interest paid by Respondent pursuant to the Requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Parties Bound

16. This Consent Agreement and Final Order shall apply to and be binding upon Respondents and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

General Provisions

17. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of this Consent Agreement and Final Order by initiating a judicial or administrative action pursuant to Section 311 of the CWA, 33 U.S.C. § 1321, and to seek penalties against Respondent, or to seek any other remedy allowed by law.

18. Complainant reserves the right to take enforcement action against Respondent for any past or future violations of the CWA and its implementing regulations, not resolved by this Consent Agreement and Final Order, and to enforce the terms and conditions of this Consent Agreement and Final Order.

19. The Final Order shall be entered and become effective upon execution by the Regional Judicial Officer after the conclusion of the period of public notice and comment required pursuant to Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), and 40

C.F.R. § 22.45. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

20. Respondent and Complainant shall each bear their respective costs and attorneys' fees.

21. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

22. The parties agree that this Consent Agreement and Final Order may be signed in part and counterpart.

For the Respondent Cargill, Incorporated:

Bart Eddy
Printed Name: Bart Eddy
Title: Vice President Engineering
Cargill Corn Milling North America

7/25/2014
Date

For the Complainant:

The United States Environmental Protection Agency

Becky Weber
Director
Air and Waste Management Division

Date

Howard C. Bunch
Sr. Assistant Regional Counsel

Date

C. FINAL ORDER

IT IS SO ORDERED.

This Final Order shall become effective immediately.

Karina Borromeo
Regional Judicial Officer

Date