

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

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ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
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IN THE MATTER OF)
)
Griffin Industries, LLC)
d/b/a Bakery Feeds)
)
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)
)
_____)

Docket No. CWA-07-2016-0005

ORDER

Pursuant to 40 C.F.R. § 22.5(a)(1), facsimile filing of page 7 of the Consent Agreement and final Order is authorized in this proceeding.

Dated: 2-22-2016

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 7

11201 RENNER BOULEVARD LENEKA, KANSAS 66219

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BEFORE THE ADMINISTRATOR

IN THE MATTER OF Griffin Industries, LLC. d/b/a Bakery Feeds Muscatine, Iowa Respondent. CONSENT AGREEMENT AND FINAL ORDER Docket No. CWA-07-2016-0005

The U.S. Environmental Protection Agency ("EPA"), Region 7 ("Complainant") and Griffin Industries, LLC ("Griffin Industries" 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).

A. ALLEGATIONS

Jurisdiction

1. This is a "Class I" 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, 40 C.F.R. Part 22. This Consent Agreement and Final Order serves as notice that EPA has reached settlement for Respondent's alleged violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), and regulations promulgated thereunder at 40 C.F.R. Part 112 for the requirements for Facility Response Plans ("FRP") at a facility located at or near Muscatine, Iowa ("Facility").

Parties

2. 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 Deputy Director of the Air and Waste Management Division of EPA, Region 7.

3. Respondent Griffin Industries, LLC, is a corporation registered and authorized to conduct business in the State of Iowa, doing business under the name of Bakery Feeds.

Statutory and Regulatory Framework

Section 311 of the CWA

4. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), provides for the regulation of onshore facilities to prevent or contain discharges of oil. Section 311(j)(1)(C) of the Act, 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”
5. EPA promulgated the Spill Prevention Control and Countermeasure (“SPCC”) regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the CWA, 33 U.S.C. § 1251 *et seq.*, which established certain procedures, methods and requirements upon each owner and operator of a non-transportation-related onshore facility.
6. The SPCC program is applicable if a facility stores greater than 1,320 gallons of oil and, due to its location, the facility could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity (“harmful quantity”) as EPA has determined in 40 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States.
7. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), EPA has determined that discharges of harmful quantities of oil include discharges that cause either (1) a violation of applicable water quality standards, or (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines, or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.
8. 40 C.F.R. § 112.2 sets forth definitions applicable to the SPCC 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 spoil.”
9. 40 C.F.R. § 112.7(a)(2) requires the owner and/or operator of an SPCC regulated facility to “comply with all applicable requirements” of 40 C.F.R. Part 112.
10. 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”).

11. 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 could cause injury to “fish and wildlife and sensitive environments,” as defined at 40 C.F.R. 112.2 (hereafter “sensitive environments”).

12. Pursuant to 40 C.F.R. § 112.20(e) and (f), the owners or operators of all SPCC regulated facilities are required to complete and maintain a copy of the “Substantial Harm Certification” form (40 C.F.R. Part 112, Appendix C) to determine the applicability of criteria set forth at 40 C.F.R § 112.20(f)(1) to their facility. Appendix C sets forth the requirements to perform a “planning distance” calculation in order to determine whether a discharge from the facility could cause injury to “sensitive environments.

Factual Background

13. Respondent Griffin Industries, LLC, 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.

Muscatine, Iowa Facility

14. Respondent purchased and commenced operations at the Facility addressed at 2579 Pettibone Avenue, Muscatine, Iowa (“Facility” or “Muscatine Facility”), on or about October 2012. 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 Facility, which stored greater than 1,320 gallons of animal fats and oils.

15. Respondent’s Muscatine facility is 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.

16. Respondent’s Muscatine Facility is 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.

17. The Muscatine Facility is adjacent to the Mississippi River, separated only by a levee. The Mississippi 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 facility would reasonably be expected to impact the Missouri River. A worst case discharge from the facility would reasonably be expected to impact “wetlands” adjacent to the Facility which are an identified sensitive environment, as defined by 40 C.F.R. 112.2.

18. On July 25, 2013, the EPA conducted an SPCC inspection of the Facility. During EPA's inspection, EPA documented the oil storage capacity of the Facility as 2,505,000 gallons. During EPA's 2013 inspection, EPA reviewed the Facility's SPCC plan and Appendix C "Substantial Harm Certification," which attested that the Facility would not impact "sensitive environments." EPA's review documented that Respondent had not properly performed the "planning distance" calculation to identify "sensitive environments," as required by 40 C.F.R. § 112.20(e) and (f). All of the conditions observed during EPA's 2013 inspection which EPA asserts constitute non-compliance with the requirements of 40 C.F.R. Part 112 are set forth in paragraphs A.21 and A.22 below.

19. On or about October 17, 2013, a copy of EPA's inspection report was transmitted to Respondent which informed the Respondent that the Muscatine Facility was subject to the FRP program and regulations set forth at 40 C.F.R. §§112.20 and 112.21.

20. In March 2015, Region 7 initiated negotiations with Respondent regarding the Facility's compliance with the SPCC and FRP programs which has resulted in this Consent Agreement and Final Order. During these negotiations, Respondent attested that it had never received EPA's 2013 transmittal of inspection report. Further, Respondent attested that as of September 9, 2015, the Muscatine Facility was no longer used for the bulk storage of oil.

Alleged Violations

Count 1:

Violations of FRP Requirements at Muscatine Facility

21. The allegations stated in paragraphs A.1 through A.20, above, are hereby incorporated by reference.

22. Respondent's failure to properly perform the planning distance calculation as cited in Paragraph 18, above, is a violation of 40 C.F.R. 112.20 and 112.21 and Section 311(j)(5).

B. CONSENT AGREEMENT

1. Respondent Griffin Industries, LLC, 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 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 factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

4. Respondent waives its right to a judicial or administrative appeal of 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 attorney's 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 Count 1, 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 Griffin Industries, LLC., certifies, that as of the date that it executes this Consent Agreement and Final Order, that it is no longer subject to the FRP requirements of 40 C.F.R. Part 112, and Section 311(j) of the CWA, 33 U.S.C. § 1321(j), for Respondent's Muscatine, Iowa facility.

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 \$12,500, plus any applicable interest, as set forth in Paragraphs B.13 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 Twelve Thousand Five Hundred Dollars (\$12,500), plus any applicable interest, according to the terms below. This payment shall reference the Docket No. CWA- 07-2016-0005 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-07-2016-0005 and **In the Matter of Griffin Industries, LLC** on the check. Copies of the check shall be mailed to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and

Howard Bunch
Office of Regional Counsel
U.S. 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 Respondent and Respondent's successors and/or assigns. Respondent shall ensure that all agents, 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. Respondent and Complainant shall each bear their respective costs and attorney's fees.

20. 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.

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

For the Respondent Griffin Industries, LLC (d/b/a Bakery Feeds):


Signature


Date 1/19/16

WILLIAM R. MCMURTRY
Printed Name

CD OF ENV. AFFAIRS
Title

For the Complainant:

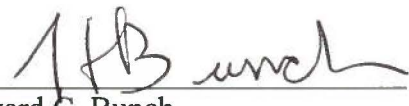
The U.S. Environmental Protection Agency



John Smith
Deputy Director
Air and Waste Management Division

2/14/16

Date



Howard C. Bunch
Sr. Assistant Regional Counsel

2/2/2016

Date

C. FINAL ORDER

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1311(b)(6), and 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, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

2-22-2016
Date

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

IN THE MATTER Of Griffin Industries, LLC d/b/a Bakery Feeds, Respondent
Docket No. CWA-07-2016-0005

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy emailed to Attorney for Complainant:

bunch.howard@epa.gov

Copy by First Class Mail to Respondent:

William R. McMurtry, Vice President of Environmental Affairs

Darling International, Inc.

251 O Connor Ridge Blvd Ste 300

Irving, Texas 75038-6510

Dated: 2/23/16



Kathy Robinson
Hearing Clerk, Region 7