

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

BEFORE THE ADMINISTRATOR

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| IN THE MATTER OF |) | |
| |) | Docket No. CWA-07-2020-0134 |
| BF Byproducts, LLC |) | |
| |) | |
| |) | COMPLAINT, CONSENT |
| |) | AGREEMENT AND |
| Respondent |) | FINAL ORDER |
| |) | |
| Proceedings under Section 311(b)(6) of the |) | |
| Clean Water Act, 33 U.S.C. § 1321(b)(6) |) | |
| _____ |) | |

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 311(b)(6) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.

2. Complainant, the U.S. Environmental Protection Agency, Region 7 (“EPA”) and Respondent, BF Byproducts (“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) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that the Respondent violated Section 311(j) of the CWA, 33 U.S.C. § 1321(j), and regulations promulgated thereunder.

Parties

4. 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 the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated the authority

under Section 311(b) to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7 (collectively referred to as the “Complainant”).

5. Respondent BF Byproducts, LLC is and was at all relevant times a limited liability company under the laws of the state of Missouri.

Statutory and Regulatory Framework

6. Section 502(7) of the CWA defines “navigable waters” as the “waters of the United States, including territorial seas.” 33 U.S.C. § 1362(7). In turn, “waters of the United States” has been defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; and tributaries to such waters. 40 C.F.R. § 122.2.

7. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil or hazardous substances into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

8. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2 define "oil" as "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 . . . "

9. Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), authorizes EPA to promulgate a regulation to define what discharges of oil may be harmful to the public health or welfare or environment of the United States. 40 C.F.R. § 110.3 defines such discharges to include discharges of oil that violate applicable water quality standards or 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.

10. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides in part that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges.”

11. To implement Section 311(j)(1)(C), EPA promulgated regulations to prevent oil pollution at 40 C.F.R. Part 112 that set forth the requirements for the preparation and implementation of Spill Prevention Control and Countermeasure Plans (“SPCC Plans”).

12. The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore facilities with an aboveground storage capacity of 1,320 gallons or greater, engaged in gathering, storing, transferring, distributing, using or consuming oil or oil products, which due to their locations, 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. In pertinent part, 40 C.F.R. § 112.8(c)(2) requires that secondary containment for oil storage be sufficiently impervious to contain a spill.

13. Section 311(c) of the CWA, 33 U.S.C. § 1321(c), provides authority, delegated to EPA, to “remove or arrange for the removal of a discharge, and mitigate or prevent a threat of a discharge...” of oil. Section 311(e) of the CWA, 33 U.S.C. § 1321(e), provides authority, delegated to EPA, to issue “administrative orders that may be necessary to protect the public health and welfare” due to an “actual or threatened discharge of oil . . . from a . . . facility in violation of [Section 311(b) of the CWA]” if “the President determines that there may be an imminent and substantial threat to the public health or welfare.”

EPA’s General Allegations

14. Respondent is a “person,” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

15. Respondent was at all relevant times 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 BF Byproducts oil storage and transfer facility located at 13210 Russell Drive in Cabool, Missouri (“Facility”).

16. Respondent stores animal fat and/or vegetable oil at the Facility and transports this oil to and from the Facility. Animal Fat and/or Vegetable Oil is a “pollutant” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

17. The Facility discharges to an unnamed tributary of Big Piney Run.

18. The Facility has an estimated above-ground storage capacity of over 60,000 gallons of oil.

19. The unnamed tributary of Big Piney Run and Big Piney Run are navigable waters or tributary to navigable waters of the United States, within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2.

20. Respondent’s 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.

21. Respondent is the owner and operator of a non-transportation-related Facility that is subject to Section 311(j) of the CWA and the SPCC regulations set forth at 40 C.F.R. Part 112 because of its location and storage capacity.

22. On March 30, 2015, the Missouri Department of Natural Resources’ (“MDNR”) Environmental Emergency Response spill line received a call from the Cabool, Missouri, Fire Chief, reporting a release of animal fat or vegetable oil from the Facility. The animal fat or vegetable oil that discharged from the facility reached and caused the observable presence of oil

and sheen in the tributary to the Big Piney Run. After inspection of the discharge, EPA issued a unilateral compliance order requiring Respondent to cease spilling, leaking, or otherwise discharging oil onto or in the ground and/or surface waters at the Facility.

23. On or about August 14, 2018, EPA conducted an inspection of the BF Byproducts facility that identified a number of violations of the requirements set forth at 40 C.F.R. Part 112.

24. On or about October 31, 2018, a private citizen contacted the sheriff's office concerning oil in the creek near BF Byproduct's facility. The Sheriff's department and representatives from MDNR's Southeast Regional Office investigated the incident on November 1, 2018. During this investigation, BF Byproducts informed MDNR that a truck containing 1,500 gallons of animal fat or vegetable oil, dispensed such oil into a tank with a capacity of only 1,000 gallons. The berm in place to prevent spills from the storage container was ineffective because the valve was left open. A second berm was also unable to contain the spill due to rain during the night. As a result, such oil reached the tributary of Big Piney Run. (the "October 31, 2018 spill").

EPA's Allegations

Violations of SPCC Program

25. Complainant hereby incorporates the allegations set forth above, as if fully set forth herein.

26. Based on information gathered during EPA's Inspection and EPA's review of other available information, Respondent failed to fully prepare and implement an SPCC Plan, as required by 40 C.F.R. 112.3, as follows:

- a. Respondent failed to conduct integrity testing of its storage tanks and had no baseline data on each tank's condition, in violation of 40 C.F.R. § 112.12(c)(6).
- b. Respondent's Plan did not include information that would enable a person reporting an oil discharge as described in 40 C.F.R. 112.1(b) to relate information described in the regulation. The procedure does not indicate that a discharge as described in 112.1(b) requires notification to the NRC.
- c. Respondent's Plan did not include the direction, rate of flow, and total quantity of oil that could be discharged for each type of major equipment failure as required by 40 C.F.R. 112.7(b).
- d. Respondent's Plan failed to include inspection of the operational pit including the associated piping and pumps and failed to state that records of inspections or tests are to be signed and dated and kept with the Plan for at least three years as required by 112.7(e).

- e. Respondent's Plan failed to include the provisions of the security requirements in accordance with 40 C.F.R. 112.7(g).
- f. Respondent's Plan failed to discuss how the facility complies with the facility drainage requirements from diked and undiked areas in accordance with 40 C.F.R. 112.12(b).
- g. Respondent's Plan did not indicate whether the containers and construction are compatible with the materials stored in accordance with 40 C.F.R. 112.12(c)1.
- h. Respondent's Plan failed to provide instruction on when the valve and/or pump is to be opened/operated under responsible supervision as required by 40 C.F.R. 112.12(c)3.
- i. Respondent's plan failed to include a facility diagram that identified the location of the 1,450-gallon operational pit, a transfer station, and any connecting pipes in accordance with 40 C.F.R. 112.7(a)(3).
- j. Respondent failed to operate transfers of oil from the tank truck through the operational pit to the aboveground storage tank in accordance with the requirements set forth in 112.12(c)(8)(v).

27. Respondent's failure to prepare and implement an SPCC plan for the facility in accordance with the requirements of 40 C.F.R. Part 112, as described in Paragraph 29, above, violated 40 C.F.R. § 112.3.

28. In accordance with Section 311(b)(6)(A)(ii) of CWA, 33 U.S.C. § 1321(b)(6)(A)(ii), EPA may assess a civil penalty to any owner or operator in charge of any onshore facility who fails to comply with any regulation issued under Section 311(j) of CWA, 33 U.S.C. § 1321(j).

CONSENT AGREEMENT

29. Respondent and the EPA agree to the terms of this Consent Agreement/Final Order.

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

31. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by the EPA in this Complaint and Consent Agreement/Final Order.

32. Respondent waives its right to contest any issue of fact or law set forth above, and its

right to appeal this Consent Agreement/Final Order.

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

34. The undersigned representative(s) of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

35. Respondent understands and agrees that this Consent Agreement/Final Order shall apply to and be binding upon Respondent 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/Final Order.

Penalty Payment

36. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a mitigated civil penalty of \$2,500 based on a substantiated ability to pay claim, as set forth below:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

The payment must also be annotated with the docket number and name of the case. Copies of the transmittal letter and the check shall be simultaneously emailed to:

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov

Elizabeth Huston, Senior Attorney
huston.liz@epa.gov

37. Respondent agrees that no portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

38. Respondent understands that, pursuant to 40 C.F.R. § 13.18, interest on any late payment will be assessed at the annual interest rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due

date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs or interest.

39. Respondent consents to receiving the filed Consent Agreement/Final Order electronically at the following address: chorton@cecb.com.

Effect of Settlement and Reservation of Rights

40. Respondent's payment of the entire civil penalty pursuant to this Consent Agreement/Final Order resolves all civil and administrative claims pursuant to Section 311(b) of the CWA, 33 U.S.C. § 1321(b), for alleged violations identified in this Complaint and Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

41. The effect of settlement described above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized herein.

42. Nothing contained in this Consent Agreement/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.

43. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial or administrative action pursuant 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.

44. With respect to matters not addressed in this Consent Agreement/Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

General Provisions

45. The Parties acknowledge that this Consent Agreement/Final Order is subject to the 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.

46. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after signature by the authorized regional official and upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

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

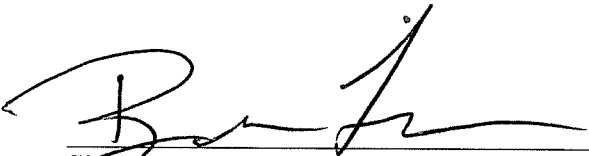
For the Complainant, United States Environmental Protection Agency Region 7:

Date

David Cozad
Director
Enforcement and Compliance Assurance Division

Elizabeth Huston
Office of Regional Counsel

For the Respondent BF Byproducts, LLC:



Signature

8-11-20

Date

Brian Fleming

Name

Owner

Title

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), 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.

Date

APPENDIX A
PENALTY PAYMENT INFORMATION

CHECK PAYMENTS:

US Environmental Protection Agency
Fines and Penalties - CFC
PO Box 979077
St. Louis, MO 63197-9000

WIRE TRANSFERS:

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

OVERNIGHT MAIL:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101
Contact: Natalie Pearson 314-418-4087

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact: Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

ONLINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury.
This payment option can be accessed from the information below:

WWW.PAY.GOV
Enter "SFO 1.1" in the search field

Open form and complete required fields.

CERTIFICATE OF SERVICE

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

Copy via email to Respondent:

Carnahan, Evans, Cantwell & Brown, P.C, c/o Christiaan Horton, Attorney for Respondent, at chorton@cecb.com

Copy via email to representatives for the Complainant:

Elizabeth Huston, EPA Region 7 Office of Regional Counsel, at huston.liz@epa.gov

Mark Aaron, EPA Region 7 Enforcement and Compliance Assurance Division, at aaron.mark@epa.gov

Dated: _____

Regional Hearing Clerk