

In Re: Ventura Foods, LLC, EPA DOCKET NO. CWA-03-2021-0032

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
PHILADELPHIA, PA 19103**

RESPONDENT
Ventura Foods LLC
40 Pointe Drive
Brea, CA 92821

**EXPEDITED SETTLEMENT AGREEMENT
DOCKET NO. CWA-03-2021-0032**

FACILITY
Ventura Foods, LLC
1501 Orchard Avenue
Chambersburg, PA 17201

On September 10, 2018, an authorized representative of the United States Environmental Protection Agency (EPA) conducted an inspection of Respondent's facility known as Ventura Foods, LLC at 1501 Orchard Avenue in Chambersburg, PA to determine compliance with the Oil Pollution Prevention Regulations promulgated at 40 CFR Part 112 (the "Regulations") under Section 311(j) of the Clean Water Act, as amended, (33 U.S.C. §1321(j)), (the "Act" or "CWA"). As a result, EPA has found that Respondent, Ventura Foods, LLC, a corporation (Respondent), is a "person" as defined in Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7), who has violated the Regulations by failing to comply with the specific regulatory requirements noted on the attached SPILL PREVENTION CONTROL AND COUNTERMEASURE INSPECTION FINDINGS AND ALLEGED VIOLATIONS AND PROPOSED PENALTY FORM ("Alleged Violations Form"), which is hereby incorporated by reference.

Respondent and the undersigned EPA Complainant ("the parties") enter into this Expedited Settlement Agreement ("the Agreement") pursuant to Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Penalties and the Revocation/ Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 CFR §§ 22.13(b) and 22.18(b)(2), (3). This Agreement is being entered into by the United States Environmental Protection Agency, Region III ("EPA"), by its duly delegated official, the Director of the Enforcement & Compliance Assurance Division, and by Respondent pursuant to Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. §1321(b)(6)(B)(i), and by 40 CFR § 22.13(b).

This Agreement is subject to the following terms and conditions.

EPA hereby finds that the Respondent is subject to the Oil Pollution Prevention Regulations and has violated the Regulations as further described in the Alleged Violations Form.

Respondent certifies, subject to civil and criminal penalties for making a false statement to the United States Government, that the violations set forth in the Alleged Violations Form have been corrected.

The Respondent consents to the assessment of a penalty in the amount of \$719.00. The penalty amount is based upon EPA's consideration of a number of factors, including, but not limited to, the seriousness of the violations and the other factors provided in CWA Section 311(b)(8) and the Revised Spill Prevention Control and Countermeasure Expedited Settlement Agreement Pilot, effective September 25, 2019. The Respondent agrees that, within 30 calendar days of the date of issuance of the Final Order approving this Agreement, Respondent shall make a payment of **\$719.00** by one of four methods: 1) electronic funds transfer ("EFT"), 2) Automated Clearinghouse, 3) Pay.gov, or 4) a cashier's check or certified check payable to the "Environmental Protection Agency", with EPA Docket No. CWA-03-2021-0032 and "Oil Spill Liability Trust Fund - 311" referenced on the check.

1) Payment of the penalty amount by EFT to:

Federal Reserve Bank of New York
ABA 021030004
Account 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary: Environmental Protection Agency

2) Payment of the penalty amount by Automated Clearinghouse (ACH) to EPA can be made through the U. S. Treasury using the following information:

U.S. Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22- Checking

Physical Location of the U.S. Treasury Facility
5700 Rivertech Court
Riverdale, MD 20737

3) Payments made through Pay.gov:

- a) Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments. Follow these steps to make a payment:
- i. You **DO NOT** need a user name and password or account.
 - ii. Enter **SFO 1.1** in the form search box on the top left side of the screen.
 - iii. Open the form and follow the on-screen instructions.
 - iv. Select your method of payment from the “Type of Payment” drop down menu.
 - v. Based on your selection, the corresponding line will open and no longer be shaded grey.
 - vi. Enter the docket number of this Agreement into the field.

4) Payment of the penalty amount by regular U.S. Postal Service shall be sent via **certified mail** to:

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

Payment of the penalty amount by overnight mail (FedEx or other non-U.S. Postal Service express mail) shall be sent to:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

A list of the payment methods is also provided on the website <https://www.epa.gov/financial/makepayment>.

Within 24 hours of payment, the Respondent shall also send proof of payment (a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer) to:

Rachel Simkins
U.S. Environmental Protection Agency, Region III
Oil & Prevention Enforcement Section (3ED12)
1650 Arch Street
Philadelphia, PA 19103-2029
simkins.rachel@epa.gov

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III
1650 Arch Street (3RC00)
Philadelphia, PA 19103-2029
R3_Hearing_Clerk@epa.gov

Late payment of the agreed upon penalty may subject Respondent to interest, administrative costs and late payment penalties in accordance with 40 C.F.R. § 13.11.

The payment made pursuant to this Agreement is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. §162(f); therefore, Respondent shall not claim it as a tax-deductible expenditure for purposes of federal, state or local law.

This Agreement and the accompanying Final Order constitute a settlement by EPA of its claims for civil penalties for the violations alleged in this Agreement. This Agreement and Final Order resolves only EPA’s claims for civil penalties for the specific violations alleged against Respondent in this Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This Agreement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Agreement and Final Order after its effective date.

Respondent neither admits nor denies the specific factual allegations set forth in the Alleged Violations Form, but agrees that jurisdiction has been established for this Agreement. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Agreement, the issuance of the Final Order, or the enforcement of this Agreement and Final Order. Respondent waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the Final Order. Moreover, Respondent agrees to bear its own costs and attorney’s fees related to this Agreement. As permitted under 40 CFR § 22.6, the Regional Hearing Clerk will serve copies of this

In Re: Ventura Foods, LLC, EPA DOCKET NO. CWA-03-2021-0032

Agreement and Final Order by e-mail to the parties at the following valid e-mail addresses: simkins.rachel@epa.gov (for Complainant), and JGray@venturafoods.com (for Respondent).

If Respondent does not sign and return this Agreement as presented within 30 days of the date of its receipt, the proposed Agreement is withdrawn without prejudice to EPA's ability to file any other enforcement action for the violations identified in the Alleged Violations Form.

ACCEPT THE PROPOSED PENALTY

I/we consent to the proposed penalty.

DECLINE THE PROPOSED PENALTY

I/we decline the proposed penalty. If you choose to decline this proposed penalty, you may be subject to formal enforcement action and, in that event, will have an opportunity to a hearing related to any subsequent penalty assessment.

COST OF COMPLIANCE

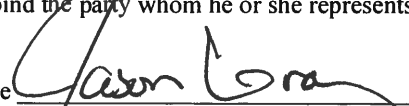
Respondent certifies that it has expended \$ 15,000.00 to correct the alleged violations and to come into compliance. Amount paid to come into compliance is an exception from the tax deduction prohibition for penalties under Section 162(f) of the Internal Revenue Code, 26 U.S.C. §162(f).

EFFECTIVE DATE

This Agreement will be effective upon filing with the Regional Hearing Clerk.

SIGNATURE BY RESPONDENT

The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to execute this Agreement and to legally bind the party whom he or she represents thereto.

Signature  Date 1/20/21

Name and Title (print): Jason Gray Sr Director of Manufacturing

SIGNATURE BY EPA

After reviewing the Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date _____
Karen Melvin, Director
Enforcement & Compliance Assurance Division

FINAL ORDER

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. §1321(b)(6), and in accordance with the Consolidated Rules of Practice, 40 CFR Part 22, and having relied upon the representations of the parties set forth in this Agreement, I have determined that the penalty assessed herein is based on a consideration of the factors set forth in CWA Section 311(b)(8) and the Revised Spill Prevention Control and Countermeasure Expedited Settlement Agreement Pilot, effective September 25, 2019.

THEREFORE, the foregoing Agreement is hereby approved and incorporated by reference into the Final Order. The Respondent is ORDERED, as set forth above, to pay the civil penalty and comply with the terms and conditions of the Agreement.

Joseph J. Lisa
Regional Judicial Officer

Date

**Spill Prevention Control and Countermeasure Inspection
Findings, Alleged Violations, and Proposed Penalty Form**

These Findings, Alleged Violations and Penalties are issued by EPA under the authority vested in the Administrator of the EPA by Section 311(b)(6)(B)(I) of the Clean Water Act, as amended by the Oil Pollution Act of 1990.



Company Name
Ventura Foods, LLC

Docket Number
CWA-03-2021-0032

Facility Name
Ventura Foods, LLC

Date
9/10/2018

Address
1501 Orchard Avenue

Facility ID Number
SPCC-PA-2018-00034

City
Chambersburg

Inspector's Name
Rachel Simkins

State **Zip Code**
PA 17201

EPA Approving Official
Karen Melvin

Contact
Mark Maragay - Risk Manager

Enforcement Contact
Rachel Simkins

Total Storage Capacity
866,743 gallons

**Summary of Findings
(Bulk Storage Facilities)**

GENERAL TOPICS: 40 C.F.R. 112.3(a), (d), (e); 112.5(a), (b), (c); 112.7 (a), (b), (c), (d)

- Failure to have a Spill Prevention Control and Countermeasure Plan 112.3 (\$1,750)
- Plan or sections of the hybrid plan are not certified by a professional engineer * 112.3(d) (\$500)
*Not applicable to Qualified facilities unless a hybrid (PE/QF plan) see Qualified facility 112.6 section
- Certification lacks one or more required elements 112.3(d)(1) (\$125)
- Plan not maintained on site (if manned at least four hrs/day) or not available for review 112.3(e)(1) (\$350)
- No evidence of five-year review of plan by owner/operator 112.5(b) (\$100)
- No plan amendment(s) if the facility has had a change in: design, construction, operation, or maintenance which affects the facility's discharge potential 112.5(a) (\$100) \$100
- Amendment(s) not certified by a professional engineer 112.5(c) (\$175)
- No management approval of plan 112.7 (\$500)
- Plan does not follow sequence of the rule and/or cross-reference not provided 112.7 (\$175)
- Plan does not discuss additional procedures/methods/equipment not yet fully operational 112.7 (\$100)

- Plan does not discuss alternative environmental protection to SPCC requirements 112.7(a)(2) (\$225)
 - Plan has inadequate or no facility diagram 112.7(a)(3) (\$100) \$100
 - Inadequate or no listing of type of oil and storage capacity of containers 112.7(a)(3)(i) (\$75) \$75
 - Inadequate or no discharge prevention measures 112.7(a)(3)(ii) (\$75)
 - Inadequate or no description of drainage controls 112.7(a)(3)(iii) (\$75)
 - Inadequate or no description of countermeasures for discharge discovery, response and cleanup 112.7(a)(3)(iv) (\$75)
 - Methods of disposal of recovered materials not in accordance with legal requirements 112.7(a)(3)(v) (\$75)
 - No contact list & phone numbers for response & reporting discharges 112.7(a)(3)(vi) (\$75)
 - Plan has inadequate or no information and procedures for reporting a discharge 112.7(a)(4) (\$125)
 - Plan has inadequate or no description and procedures to use when a discharge may occur 112.7(a)(5) (\$175)
 - Inadequate or no prediction of equipment failure which could result in discharges 112.7(b) (\$175)
 - Plan does not discuss and facility does not implement appropriate containment/diversionary structures/ equipment 112.7 (\$450)
 - Inadequate containment or drainage for Loading Area- 112.7(c) (\$450)
 - Plan has no or inadequate discussion of any applicable more stringent State rules, regulations, and guidelines- 112.7(j) (\$100)
 - Plan does not include a signed copy of the Certification of Applicability of the Substantial Harm Criteria per 40 CFR Part 112.20(e) (\$175)
- If claiming impracticability of containment and appropriate diversionary structures:**
- Impracticability has not been clearly denoted and demonstrated in plan 112.7(d) (\$125)
 - No periodic integrity and leak testing 112.7(d) (\$175)
 - No contingency plan 112.7(d)(1) (\$175)
 - No written commitment of manpower, equipment, and materials 112.7(d)(2) (\$175)
 - No periodic integrity and leak testing , if impracticability is claimed 112.7(d) (\$175)
 - Plan has no or inadequate discussion of general requirements not already specified 112.7(j) (\$100)

QUALIFIED FACILITY REQUIREMENTS: 40 C.F.R. 112.6

- Qualified Facility: No Self certification 112.6(a) (\$500)
- Qualified Facility: Self certification lacks required elements 112.6(a) (\$125)
- Qualified Facility: Technical amendments not certified 112.6(b) (\$175)
- Qualified Facility: Qualified Facility Plan includes alternative measures not certified by liscensed Professional Engineer 112.6(b) \$175
- Qualified Facility: Environmental Equivalence or Impracticability not certified by PE 112.6(b)(4) (\$400)

WRITTEN PROCEDURES AND INSPECTION RECORDS: 40 C.F.R. 112.7(e)

- Plan does not include inspections and test procedures in accordance with 40 CFR Part 112 112.7(e) (\$100)
- Inspections and tests required are not in accordance with written procedures developed for the facility 112.7(e) (\$100) \$100
- No Inspection records were available for review 112.7(e) (\$225)
(Written procedures and/or a record of inspections and/or customary business records)
- Inspection records are not signed by appropriate supervisor or inspector 112.7(e) (\$100)
- Inspection records are not maintained for three years 112.7(e) (\$100)

PERSONNEL TRAINING AND DISCHARGE PREVENTION PROCEDURES: 40 C.F.R. 112.7(f)

- No training on the operation and maintenance of equipment to prevent discharges and/or facility operations 112.7(f)(1) (\$100)
- No training on discharge procedure protocols 112.7(f)(1) (\$100)
- No training on the applicable pollution control laws, rules and regulations, and/or SPCC plan 112.7(f)(1) (\$100)
- No designated person accountable for spill prevention 112.7(f)(2) (\$100)
- Spill prevention briefings are not scheduled and conducted at least once a year 112.7(f)(3) (\$100) \$100
- Plan has inadequate or no discussion of personnel and spill prevention procedures 112.7(a)(1) (\$100)

SECURITY (excluding Production Facilities): 40 C.F.R. 112.7(g)

- Plan does not describe how the facility secures and controls access to the oil handling, processing and storage areas 112.7(g)(1) (\$175)
- Master flow and drain valves not secured 112.7(g)(2) (\$350)
- Starter controls on pumps not secured to prevent unauthorized access- 112.7(g) (\$100)
- Out-of-service and loading/unloading connection(s) of piping/pipelines not adequately secured 112.7(g)(4) (\$100)
- Plan does not address the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges 12.7(g) (\$175)

FACILITY TANK CAR AND TANK TRUCK LOADING/UNLOADING: 40 C.F.R. 112.7(c) and/or (h-j)

- Inadequate secondary containment, and/or rack drainage does not flow to catchment basin treatment system, or quick drainage system 112.7(h)(1) (\$850)
- Containment system does not hold at least the maximum capacity of the largest single compartment of any tank car or tank truck 112.7(h)(1) (\$525)
- There are no interlocked warning lights, or physical barrier system, or warning signs, or vehicle brake interlock system to prevent vehicular departure before complete disconnect from transfer lines- 112.7(h)(2) (\$350)
- There is no inspection of lowermost drains and all outlets prior to filling and departure of any tank car or tank truck- 112.7(h)(3) (\$175)

- Plan has inadequate or no discussion of facility tank car and tank truck loading/unloading rack 112.7(a)(1) (\$100)

QUALIFIED OIL OPERATIONAL EQUIPMENT: 40 C.F.R. 112.7(k)

- Failure to establish and document procedures for inspections or a monitoring program to detect equipment failure and/or a discharge 112.7(k)(2)(i) (\$175)
- Failure to provide an oil spill contingency plan 112.7(k)(2)(ii)(A) (\$175)
- No written commitment of manpower, equipment, and materials 112.7(k)(2)(ii)(B) (\$175)

FACILITY DRAINAGE: 40 C.F.R 112.8(b) & (c) and/or 112.12(b) & (c)

- Secondary Containment circumvented due to containment bypass valves left open and/or pumps and ejectors not manually activated to prevent a discharge 112.8(b)(1)and(2), and 112.8(c)(3)(i) (\$700)
- Dike water is not inspected prior to discharge and/or valves not open & resealed under responsible supervision 112.8(c)(3)(ii)and(iii) (\$525)
- Adequate records (or NPDES permit records) of drainage from diked areas not maintained 112.8(c)(3)(iv) (\$100)
- Drainage from undiked areas do not flow into catchment basins ponds or lagoons, or no diversion system to retain or return a discharge to the facility 112.8(b)(3)and(4) (\$525)
- Two “lift” pumps are not provided for more that one treatment unit 112.8(b)(5) (\$75)
- Plan has inadequate or no discussion of facility drainage 112.7(a)(1) (\$100)

BULK STORAGE CONTAINERS: 40 C.F.R. 112.7(i), 112.8(c) and/or 112.12(c)

- Failure to conduct evaluation of field-constructed aboveground containers for risk of discharge or failure due to brittle fracture or other catastrophe 112.7(i) \$350
- Material and construction of containers not compatible to the oil stored and the conditions of storage such as pressure and temperature 112.8(c)(1) (\$525)
- Secondary containment is inadequate 112.8(c)(2) (\$850)
- Secondary containment systems are not sufficiently impervious to contain oil 112.8(c)(2) (\$425)
- Completely buried tanks installed after August 16, 2002 are not protected from corrosion or are not subjected to regular pressure testing 112.8(c)(4) (\$175)
- Buried sections of partially burried metallic tans are not protected from corrosion 112.8(c)(5) (\$175)
- Aboveground tanks are not subject to visual inspections 112.8(c)(6) (\$525)
- Aboveground tanks are not subject to periodic integrity testing techniques such as visual inspections hydrostatic testing, or other nondestructive methods 112.8(c)(6) (\$525)
- Records of inspections (or customary business records) do not include inspections of container supports/ foundation, signes of container deterioration, discharges and/or accumulations of oil inside diked areas 112.8(c)(6) (\$525)
- Steam return/exhaust of internal heating coils which discharge into an open water course are not monitored, passed through a settling tank, skimmer or other separation system 112.8(c)(7) (\$175)
- Container installations are not engineered or updated in accordance with good engineering practice because none of the following are present: 112.8(c)(8) (\$525)
 - high liquid level alarm with audable or visual signal,or audible air vent 112.8(c)(8)(i)

- high liquid level pump cutoff devices set to stop flow at a predetermined level 112.8(c)(8)(ii)
- direct audible or code signal communication between container gauger and pumping station 112.8(c)(8)(iii)
- fast response system for determining liquid level of each bulk storage container, or direct vision gauges with a person present to monitor gauges and the overall filling of bulk storage containers 112.8(c)(8)(iv)

- No testing of liquid level sensing devices to ensure proper operation 112.8(c)(8)(v) (\$100)
- Effluent treatment facilities not observed frequently to detect possible system upsets that could cause a discharge as described in §112.1(b)- 112.8(c)(9) (\$175)
- Causes of leaks resulting in accumulations of oil in diked areas are not promptly corrected 112.8(c)(10) (\$525)
- Mobile or portable storage containers are not positioned or located to prevent discharged oil from reaching navigable water or have inadequate secondary containment 112.8(c)(11) (\$175)
- Secondary containment inadequate for mobile or portable storage tanks 112.8(c)(11) (\$600)
- Plan has inadequate or no discussion of bulk storage tanks 112.7(a)(1) (\$100) \$100

FACILITY TRANSFER OPERATIONS, PUMPING, AND FACILITY PROCESS: 40 C.F.R. 112.8(d) and 112.12(d)

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- Buried piping is not corrosion protected with protective wrapping, coating or cathodic protection protection 112.8(d)(1) (\$175)
 - Corrective action is not taken on exposed sections of buried piping when deterioration is found 112.8(d)(1) (\$525)
 - Not-in-service or standby piping is not capped or blank-flanged and marked as to origin 112.8(d)(2) (\$100)
 - Pipe supports are not properly designed to minimize abrasion and corrosion, and allow for expansion and contraction 112.8(d)(3) (\$100)
 - Aboveground valves, piping and appurtenances are not inspected regularly 112.8(d)(4) (\$350)
 - Periodic integrity and leak testing of buried piping is not conducted at time of installation, modification, construction, relocation, or replacement 112.8(d)(4) (\$175)
 - Vehicle traffic is not warned of aboveground piping or other oil transfer operations 112.8(d)(5) (\$175)
 - Plan has inadequate or no discussion of facility transfer operations, pumping, and facility process 112.7(a)(1) (\$100)

SUB TOTAL		\$575
Multiplier		1.25
	Total	\$719

Quantity Multiplier Table

Total Oil Storage Capacity (gallons)*	Quantity Multiplier
1,320 – 10,000	0.75
10,001 – 41,999	1
42,000 – 999,999	1.25
1,000,000 – 9,999,999	1.75
>10,000,000	2