

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

BEFORE THE ADMINISTRATOR

FILED

September 13, 2023

6:33AM

U.S. EPA REGION 7  
HEARING CLERK

In the Matter of:

COMPLAINT, CONSENT AGREEMENT  
AND FINAL ORDER

Landstar Inway, Inc., a corporation,

Docket No. CWA-07-2023-0015

Respondent

Proceedings under Section 311(b)(6)(B)(ii)  
of the Clean Water Act, U.S.C.  
§ 1321(b)(6)(B)(ii)

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**COMPLAINT**

**Jurisdiction**

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 311(b)(6)(B)(ii) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (“CWA”), 33 U.S.C. § 1321(b)(6)(B)(ii), 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” or “Complainant”) and Respondent, Landstar Inway, Inc. (“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. 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 it to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7.

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

### **Statutory and Regulatory Framework**

5. The objective of the CWA, 33 U.S.C. § 1251 et seq., is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”
6. Section 311(b)(3) of the Act, 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.
7. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), defines “discharge” to include “any spilling, leaking, pumping, pouring, emitting, emptying or dumping....”
8. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), defines “person” to include an individual, firm, corporation, association, and a partnership.
9. Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6) defines “owner or operator”, in pertinent part, as “in the case of an onshore facility, ... any person owning or operating such onshore facility....”
10. Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10) defines “onshore facility” as “any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land.”
11. Pursuant to Section 311(b)(4) of the CWA, 33 U.S.C. 1321(b)(4), discharges of a hazardous substance in such quantities that have been determined may be harmful and thereby prohibited under Section 311(b)(3), 33 U.S.C. 1321(b)(3), are discharges of hazardous substances identified in 40 C.F.R. Part 116 in excess of the corresponding reportable quantity listed in 40 C.F.R. Part 117.
12. Chlorpyrifos is designated as a hazardous substance at 40 C.F.R. § 116.4, with a reportable quantity of 1 pound, as listed in 40 C.F.R. § 117.3.
13. In accordance with Section 311(b)(6)(A)(ii) of the 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 violates Section 311(b)(3) of CWA, 33 U.S.C. § 1321(b)(3) of up to \$20,719 per day that the violation continues, up to the statutory maximum for administrative penalty actions of \$258,978.

### **General Allegations**

14. Respondent is a corporation organized under the laws of Delaware that is authorized to do business in the state of Missouri and is a “person” within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.

15. On April 24, 2021, a tractor trailer owned and/or operated by Respondent containing liquid and solid chlorpyrifos, an organo-phosphate based insecticide, was involved in a serious, no-fault accident wherein the vehicle left the roadway at the interchange of I-229 and I-29, near St. Joseph, Missouri and crashed through a guardrail and down an embankment into an actively flowing drainage ditch at the bottom of the embankment. A witness statement taken by the responding Missouri State Highway Patrol stated that a car was observed cutting off the tractor trailer just prior to the accident.

16. Chlorpyrifos containers contained in the tractor trailer were deposited into the water flowing within the drainage ditch that then directly flows into the adjacent Candy Creek. Contaminated soils and broken and leaking containers deposited within the drainage ditch and onto adjoining shorelines continued to discharge chlorpyrifos until at least April 28, 2021, with sediment and stream sampling showing the continuing presence of harmful quantities of chlorpyrifos present in the drainage ditch and adjoining shorelines and/or Candy Creek through May 20, 2021.

17. On April 24, 2021, at 9:59 pm, Respondent reported the spill to the National Response Center (NRC Report # 1303422). Emergency response contractors dispatched by Respondent arrived at the site at 10:00 pm. EPA and Missouri Department of Natural Resource (“MDNR”) staff were dispatched to the crash site, with MDNR taking the lead in oversight of Respondent’s response to the accident.

18. The drainage ditch and Candy Creek are each a navigable water of the United States within the meaning of 40 C.F.R. § 112.2 and Section 502(7) of the Act, 33 U.S.C. § 1362(7).

19. Respondent is the “owner” and/or “operator” of the tractor trailer that crashed on April 24, 2021 (and deposited chlorpyrifos into the drainage ditch and Candy Creek and adjoining shorelines), within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.

20. Respondent’s tractor trailer that crashed is a vehicle and an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

21. As part of its clean-up efforts, Respondent performed stream and sediment sampling through May 20, 2021, which documented harmful concentrations of chlorpyrifos up to an estimated three miles downstream from the crash site, with subsequent sampling showing progressively declining detections of chlorpyrifos. Respondent’s response actions commenced on April 24, 2021, and lasted until June 21, 2021, when final cleanup, restoration, and reseeded of the impacted shorelines at the crash site was concluded.

22. The discharge of chlorpyrifos within the adjoining drainage ditch and Candy Creek and adjoining shorelines continued for at least four days as Respondent worked to remove broken containers, loose materials, and contaminated water and soils from the area.

### **Findings of Violations**

#### **Count 1: Unauthorized Discharge of a Hazardous Substance**

23. The allegations above are incorporated herein.

24. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 117 prohibit the discharge of hazardous substances into or upon “navigable waters of the United States” in such quantities as may be harmful.

25. A trailer owned and/or operated by Respondent was involved in a motor vehicle accident that involved the trailer overturning, resulting in significant damage to the trailer and many of the containers of chlorpyrifos being hauled as cargo. Due to this accident, on April 24, 2021, chlorpyrifos from the broken pesticide containers was discharged and contaminated adjoining shorelines into the drainage ditch and Candy Creek. The discharge occurred for at least four days during the initial clean-up phase of Respondent’s response efforts. The drainage ditch and Candy Creek are each a navigable water of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

26. The discharge of chlorpyrifos, a hazardous substance within the meaning of 40 C.F.R. § 116.4, due to the accident involving the trailer owned and/or operated by Respondent was in a quantity that has been determined to be harmful under 40 C.F.R § 117.3, and therefore violated the prohibition of Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

### **Consent Agreement**

#### **General Provisions**

27. Respondent and the EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of this CAFO.

28. 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 any portion of this CAFO.

29. Respondent and Complainant agree to bear their own costs and attorney’s fees incurred as a result of this action.

30. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a civil penalty of **\$207,000**, as set forth in the Penalty section below.

31. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest the EPA’s jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

32. Respondent neither admits nor denies the factual allegations asserted above by the EPA.

33. Respondent certifies by the signing of this CAFO that Respondent is in compliance with all requirements of the CWA.

34. The effect of settlement is conditional upon the accuracy of Respondent's representations to the EPA in this CAFO.

Reservation of Rights

35. This CAFO addresses all civil and administrative claims for the CWA violations alleged above. With respect to matters not addressed in this CAFO, 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.

36. 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.

37. Notwithstanding any other provision of this CAFO, the EPA reserves the right to enforce the terms of this CAFO 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.

Penalty

38. Respondent agrees to pay a civil penalty of **\$207,000** pursuant to the authority of Section 311 of the CWA, 33 U.S.C. § 1321, within thirty (30) days of the Effective Date of this CAFO.

39. The payment of penalties must reference docket number CWA-07-2023-0015 and be remitted to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979078  
St. Louis, Missouri 63197-9000

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

40. Copies of the checks or verification of another payment method for the penalty payments remitted shall be emailed to:

Adam Hilbert  
Attorney Adviser  
U.S. Environmental Protection Agency Region 7  
*Hilbert.adam@epa.gov*

and

Regional Hearing Clerk  
U.S. Environmental Protection Agency Region 7  
*r7\_hearing\_clerk\_filings@epa.gov.*

41. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

42. Respondent understands that its failure to timely pay any portion of the civil penalty described in herein may result in the commencement of a civil action in the United States District Court for the District of Kansas to recover the full remaining balance, along with penalties and accumulated interest.

43. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Signatories

44. The undersigned for each party has the authority to bind each respective party to the terms and conditions of this CAFO. The CAFO may be signed in part and counterpart by each party.

Parties Bound

45. This CAFO 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 CAFO.

Definitions

46. Terms used in this order that are defined in the CWA or EPA regulations promulgated under the CWA have the meanings assigned to them in the CWA or those regulations, unless otherwise provided in this Order.

*Executed Agreement Filed*

47. This executed Complaint and Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

*Electronic Service*

48. Respondent consents to receiving the filed Consent Agreement/Final Order electronically at the following email address: *jaime.saylor@h2lawyers.com*.

**For the Respondent, Landstar Inway, Inc.:**

Signature:  Date: July 19, 2023

Name: Michael F. Kneller Title: Vice President, General Counsel  
& Secretary



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

\_\_\_\_\_  
Date

WENDY  
LUBBE

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WENDY LUBBE  
Date: 2023.09.11  
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David Cozad  
Director  
Enforcement and Compliance Assurance Division

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Date

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Adam Hilbert  
Attorney Adviser  
Office of Regional Counsel

**FINAL ORDER**

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(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.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Karina Borromeo  
Regional Judicial Officer

**Certificate of Service**

I certify that on the date noted below I delivered a true and correct copy of this Complaint and Consent Agreement/Final Order by electronic mail, to:

For Complainant:

Adam Hilbert  
Office of Regional Counsel  
U.S. Environmental Protection Agency Region 7  
*hilbert.adam@epa.gov*

Mark Aaron  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency Region 7  
*Aaron.mark@epa.gov*

For Respondent:

Jaime Saylor  
Counsel for Respondent  
Hatchett & Hauck LLP  
*Jaime.saylor@h2lawyers.com*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature