

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

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2016

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )

Darling National, LLC. )  
Darling Ingredients, Inc. )  
(d/b/a Dar Pro) )

Kansas City, Kansas )  
Wichita, Kansas )

Respondents. )

**CONSENT AGREEMENT  
AND FINAL ORDER**

Docket No. CWA-07-2016-0006

The U.S. Environmental Protection Agency (“EPA”), Region 7 (“Complainant”) and Darling National, LLC (“Darling National”) and Darling Ingredients, Inc. (“Darling Ingredients”) (collectively hereafter as Respondents”) 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 CAFO serves as notice that EPA and the Respondents have reached settlement for Respondents’ 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 Spill Prevention Control and Countermeasures Plans (“SPCC”) at facilities located at or near Kansas City and Wichita, Kansas (“Facilities”).

### 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 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 Air and Waste Management Division of EPA, Region 7.

3. Respondents are each a corporation registered and authorized to conduct business in the State of Kansas. Both Respondents do business under the name of Dar Pro.

### 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 subsequently promulgated the 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. Pursuant to 40 C.F.R. § 112.1, 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 as EPA has determined in 40 C.F.R. § 110.3 may be harmful (“harmful quantity”) 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 include oil 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 Facility Response Plan (“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 spoil.”

9. 40 C.F.R. § 112.7(a)(2) requires the owner and/or operator of a SPCC regulated facility to “comply with all applicable requirements” of 40 C.F.R. Part 112. The SPCC requirements for facilities that store “animal, fats, and vegetable oils” (“AFVO”) are set forth at 40 C.F.R. § 112.12.

### **Factual Allegations**

10. Respondents are each 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.

### **Kansas City and Wichita Facilities**

11. At all times relevant to the allegations in this Complaint, Respondents were the “owner or operator,” within the meaning of Section 311(a)(6) of the CWA, 33 U.S. § 1321(a)(6) and 40 C.F.R. § 112.2, of the rendering facilities addressed at 685 Adams Street, Kansas City Kansas (“Kansas City Facility”) and 2155 North Mosley, Wichita, Kansas (“Wichita Facility”), which each stored greater than 1,320 gallons of animal fats and oils.

12. Respondents’ Kansas City and Wichita 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.

13. Respondents’ Kansas City and Wichita Facilities are each “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.

14. The Kansas City Facility is directly adjacent to the Kansas River. The Kansas 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 Kansas River.

15. The Wichita Facility is directly adjacent to Chisolm Creek. Chisolm Creek 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 Chisolm Creek.

16. On July 11, 2013, the EPA conducted a SPCC inspection of the Kansas City Facility. During EPA’s inspection, EPA documented observations of Respondent Darling Ingredient’s non-compliance with SPCC requirements at the Kansas City Facility, all of which are set forth in paragraph A.20 below. On or about October 17, 2013, a copy of EPA’s inspection report was transmitted to Respondent which informed Respondent of the EPA’s observed violations of the SPCC program.

17. On April 4, 2013, the EPA conducted a SPCC inspection of the Wichita Facility. During EPA's inspection, EPA documented observations of Respondent Darling National's non-compliance with SPCC requirements at the Wichita Facility, all of which are set forth in paragraph A.25 below. On or about November 5, 2013, a copy of EPA's inspection report was transmitted to Respondent which informed Respondent of the EPA's observed violations of the SPCC program.

### Alleged Violations

#### **Count 1:**

#### **Violations of SPCC Requirements at Kansas City Facility**

18. The allegations stated in paragraphs A.1 through A.17 above, are hereby incorporated by reference.

19. At the time of the July 2013 inspection of the Kansas City Facility, and thereafter, Respondent failed to fully prepare and implement an SPCC Plan, as required by 40 C.F.R. § 112.3.

20. At the time of the July 2013 inspection, and thereafter, Respondent Darling Ingredients failed to comply with the requirements of 40 C.F.R. Part 112, as required by 40 C.F.R. § 112.7(a)(2), as follows:

- a. The Facility SPCC Plan failed to contain documentation of 5 year review of the 2009 plan, in violation of 40 C.F.R. § 112.5(b);
- b. Failure to properly calculate storage capacity based on shell capacity of bulk storage containers, in violation of 40 C.F.R. § 112.3 and 112.7;
- c. The Facility SPCC Plan failed to contain required technical amendments to the Facility's 2009 SPCC Plan, as necessitated by the addition of 2 tanks, in violation of 40 C.F.R. § 112.5(a);
- d. The Facility SPCC Plan failed to document all oil filled equipment, in violation of 40 C.F.R. § 112.7(a)(3);
- e. The Facility SPCC Plan failed to fully describe general secondary containment or drainage, in violation of 40 C.F.R. 112.7(a)(3)(iii);
- f. The Facility SPCC Plan failed to describe the direction, rate, flow, total quantity of discharge from major equipment failures, in violation of 40 C.F.R. 112.7(b); and,
- g. The Facility SPCC failed to describe an integrity testing standard that comported with an objective industry standard, in violation of 40 C.F.R. § 112.12(c)(6);

21. Respondent Darling Ingredient's failure to prepare and implement an SPCC plan for the Kansas City Facility in accordance with the requirements of 40 C.F.R. Part 112, as

described in Paragraph 20, above, violated 40 C.F.R. § 112.3.

22. Respondent Darling Ingredient's violations of the cited requirements of 40 C.F.R. Part 112, as described in Paragraph 20, above, are also violations of 40 C.F.R. § 112.7(a)(2).

**Count 2:  
Violations of SPCC Requirements at Wichita Facility**

23. The allegations stated in paragraphs A.1 through A.17 above, are hereby incorporated by reference.

24. At the time of the April 2013 inspection of the Wichita Facility, and thereafter, Respondent Darling National failed to fully prepare and implement an SPCC Plan, as required by 40 C.F.R. § 112.3.

25. At the time of the April 2013 inspection, and thereafter, Respondent Darling National failed to comply with the requirements of 40 C.F.R. Part 112, as required by 40 C.F.R. § 112.7(a)(2), as follows:

- a. The Facility SPCC Plan failed to contain a complete cross reference of Plan to SPCC regulations, in violation of 40 C.F.R. 112.7;
- b. The Facility SPCC Plan failed to properly calculate storage capacity based on shell capacity of bulk storage containers, in violation of 40 C.F.R. § 112.3 and 112.7;
- c. The Facility SPCC Plan failed to contain a facility description or diagram at time of inspection, in violation of 40 C.F.R. 112.7(a)(3);
- d. The Facility SPCC Plan failed to fully describe general secondary containment or drainage, in violation of 40 C.F.R. 112.7(a)(3)(iii);
- e. The Facility SPCC Plan failed to document all bulk storage tanks and/or oil filled equipment, in violation of 40 C.F.R. § 112.7(a)(3);
- f. The Facility SPCC Plan failed to describe the direction, rate, flow, total quantity of discharge from major equipment failures, in violation of 40 C.F.R. 112.7(b);
- g. The Facility SPCC Plan failed to describe an integrity testing standard that comported with an objective industry standard, in violation of 40 C.F.R. § 112.12(c)(6).

26. Respondent Darling National's failure to prepare and implement an SPCC plan for the Wichita Facility in accordance with the requirements of 40 C.F.R. Part 112, as described in Paragraph 26, above, violated 40 C.F.R. § 112.3.

27. Respondent Darling National's violations of the cited requirements of 40 C.F.R. Part 112, as described in Paragraph 26, above, are also violations of 40 C.F.R. § 112.7(a)(2).

## **B. CONSENT AGREEMENT**

1. Respondents and EPA agree to the terms of this Consent Agreement and Final Order and Respondents agree to comply with the terms of this Consent Agreement and Final Order.
2. Respondents admit the jurisdictional allegations of this Consent Agreement and Final Order and agree 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. Respondents neither admit nor deny the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.
4. Respondents waive their rights to a judicial or administrative appeal of this Consent Agreement and Final Order.
5. Respondents 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 Counts 1 and 2, 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 Respondents' obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.
8. The undersigned representatives of the Respondents certify 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 Respondents to the terms contained herein.
9. Respondents certify, that to the best of their knowledge, as of the date that it executes this Consent Agreement and Final Order, that each is in compliance with the SPCC requirements of 40 C.F.R. Part 112 at the subject Facilities. Respondents further agree that a licensed Professional Engineer will complete an evaluation of the adequacy of each facility's SPCC plan (general and sized containment) within sixty (60) days of the effective date of this Consent Agreement and Final Order, and if additional changes are found appropriate by Respondents' Professional Engineer, they will further amend each facility's SPCC plan to address such findings within six (6) months of such finding, and will implement the amended plan as soon as possible, but not later than six months following the preparation of the amendment in accordance the provisions of 40 .C.F.R. § 112.5.

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

11. Respondents agree that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondents shall pay a CWA penalty of Twenty-three Thousand, Five Hundred Dollars (\$23,500), plus any applicable interest, as set forth in Paragraphs B.13 to B.15, below.

12. Respondents understand 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, Respondents shall pay a total civil penalty of Twenty-three Thousand, Five Hundred Dollars (\$23,500), plus any applicable interest, according to the terms below. This payment shall reference the Docket No. CWA- 07-2016-0006 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 Respondents shall reference the Docket Number CWA-07-2016-0006 and **In the Matter of Darling National, LLC; Darling Ingredients, Inc. (d/b/a Dar Pro)** 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 Respondents pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondents 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 Respondents' successors and/or assigns. Respondents shall ensure that all agents, contractors, employees, consultants, firms or other persons or entities acting for Respondents 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 each Respondent, or to seek any other remedy allowed by law.

18. Complainant reserves the right to take enforcement action against Respondents 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. Respondents 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 Darling National, LLC:**

  
\_\_\_\_\_  
Signature

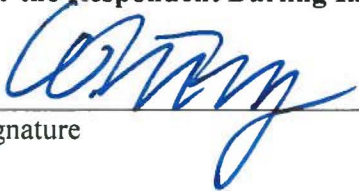
1/19/16  
Date

WILLIAM R. MCMURTRY  
Printed Name



VP OF ENVIR. AFFAIRS  
Title

**For the Respondent Darling Ingredients, Inc.**

  
\_\_\_\_\_  
Signature

1/19/16  
Date

WILLIAM R. MCMURTRY  
Printed Name

VP OF ENV. AFFAIRS  
Title

**For the Complainant:**

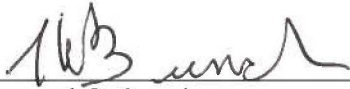
The U.S. Environmental Protection Agency



\_\_\_\_\_  
John Smith  
Deputy Director  
Air and Waste Management Division

2/4/16

\_\_\_\_\_  
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. § 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 Respondents are 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 Darling National, LLC/Darling Ingredients, Inc. (d/b/a Dar Pro),  
Respondents  
Docket No. CWA-07-2016-0006

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