



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 08 2014

REPLY TO THE ATTENTION OF:
SE-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Brett Yoder
President
Yoder Oil Co., Inc.
1221 N. Nappanee Street
Elkhart, Indiana 46515

Re: Yoder Oil Co., Inc. – Elkhart, Indiana
Consent Agreement and Final Order – Docket No: **CWA-05-2014-0008**

Dear Mr. Yoder:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed with the Regional Hearing Clerk on August 8, 2014.

The civil penalty in the amount of \$28,770 is to be paid in the manner prescribed in paragraphs 41 through 45. Please be certain to reference your check and transmittal letter with docket number CWA-05-2014-0008. Your payment is due by September 8, 2014.

Please feel free to contact Joseph Ufig at (312) 353-8205 if you have any questions regarding the enclosed document. Please direct any legal questions to Andre Daugavietis, Associate Regional Counsel, at (312) 886-6663. Thank you for your assistance in resolving this matter.

Sincerely yours,

Sharon Jaffess, Chief
Enforcement and Compliance Branch

MICHAEL B. HANS, ACTING
CHIEF

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)
)
)
Yoder Oil Co., Inc.)
1125 Kent Street)
Elkhart, Indiana,)
)
Respondent.)

**CWA SECTION 311 CLASS I
CONSENT AGREEMENT
AND FINAL ORDER**



Docket No.
CWA-05-2014-0008

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 311(b)(6)(B)(i) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990, and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is, by lawful delegation, the Director of the Superfund Division, United States Environmental Protection Agency, Region 5.
3. Respondent is Yoder Oil Co., Inc. (Yoder), a corporation doing business in the State of Indiana.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent waives its right to request a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, its right to appeal this CAFO, and consents to the issuance of this CAFO without further adjudication.

Statutory and Regulatory Background

10. 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”

11. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to the EPA his authority under Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), to issue the regulations referenced in

the preceding paragraph for non-transportation-related onshore facilities.

12. EPA subsequently promulgated the Spill Prevention, Control, and Countermeasure (SPCC) regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the Act, 33 U.S.C. § 1251 *et seq.* The SPCC regulations established certain procedures, methods and requirements for each owner or operator of a non-transportation-related onshore facility, if such facility, due to its location, 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 the 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.

13. The regulation at 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated facility prepare and implement a written SPCC plan in accordance with 40 C.F.R. § 112.7 and any other applicable sections of 40 C.F.R. Part 112.

14. The regulation at 40 C.F.R. § 112.8 requires that the owner or operator of an SPCC-regulated facility meet the specific discharge prevention and containment procedures listed in that section.

15. Specific regulatory requirements applicable to the Facility are set forth in more detail below.

16. Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and the regulation at 40 C.F.R. § 19.4, authorize EPA to assess a civil penalty for violations of the SPCC regulations promulgated pursuant to Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), of up to \$16,000 per day for violations that occurred after January 12, 2009, up to a maximum of \$177,500.

Factual Allegations and Alleged Violation

17. Respondent is a corporation organized under the laws of Indiana with a place of business located at 1125 Kent Street, Elkhart, Indiana. Respondent 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.

18. Respondent is the owner and operator 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 of an onshore bulk oil storage facility located on the Respondent's place of business ("the Facility").

19. Oil from the Facility, in the event of a discharge, could reasonably be expected to flow to storm sewer access points located near the Facility, ultimately reaching the Elkhart River, approximately one and a half to two miles away from the Facility. The Facility's oil, in the event of a discharge, could also reasonably be expected to flow 600 feet south of the facility to an unnamed waterbody, either along the topography or through a sewers located within or near the grounds of the facility.

20. The Facility has above-ground storage capacity greater than 1,320 gallons of oil in containers each with a shell capacity of at least 55 gallons.

21. The Elkhart River and the unnamed waterbody 600 feet south of the facility are navigable waters 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).

22. Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products located at the Facility.

23. The Facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

24. The Facility is 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.

25. The Facility is therefore a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity (“an SPCC-regulated facility”).

26. Operations commenced at the Facility approximately fifty years ago.

27. Pursuant to the Act, E.O. 12777, and 40 C.F.R. § 112.1 Respondent, as the owner and operator of an SPCC-regulated facility, is subject to the SPCC regulations.

28. As set forth above, the regulation at 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated facility prepare and implement a written SPCC plan in accordance with 40 C.F.R. § 112.7 and any other applicable section of 40 C.F.R. Part 112.

29. On August 23, 2010, the EPA inspected the Facility and evaluated the Facility’s SPCC plan.

30. Following the August 2010 inspection, Respondent provided EPA with a conditional Professional Engineer’s certification for the Facility’s SPCC Plan, dated December 5, 2010. In summary, the certifying Professional Engineer stipulated that Respondent must construct a concrete containment area around the Facility’s loading/unloading rack, and replace the existing concrete block retaining wall with a solid concrete retaining wall within eight months of the December certification. Respondent did not address these issues at the Facility until October 15, 2012, when it emptied the Facility’s storage tanks to commence construction.

During this time Respondent was in violation of 40 C.F.R. § 112.3.

31. The regulation at 40 C.F.R. § 112.3(d) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to have a licensed Professional Engineer review and certify their facility's SPCC Plan. At the time of the August 23, 2010, inspection, Respondent maintained a SPCC Plan for the Facility that did not have a Professional Engineer's certification, in violation of 40 C.F.R. § 112.3(d).

32. The regulation at 40 C.F.R. § 112.7(a) sets forth the general requirements for SPCC Plans, including the requirement to document a facility's conformance with the requirements of 40 C.F.R. Part 112, Subpart A, at 40 C.F.R. § 112.7(a)(1).

33. The regulation at 40 C.F.R. § 112.7(h)(1) requires that facility tank car and tank truck loading/unloading racks use a quick drainage system for racks where rack drainage does not flow into a catchment basin or treatment facility designed to handle discharges, and that any containment system be designed to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the facility.

34. At the time of the August 2010 inspection, Respondent did not provide containment for the loading/unloading rack at the Facility, in violation of 40 C.F.R. § 112.7(h)(1).

35. The regulation at 40 C.F.R. § 112.7(k) requires that the owner or operators of facilities with oil-filled operational equipment provide secondary containment for this equipment pursuant to 40 C.F.R. § 112.7(c), or undertake the alternate requirements of paragraph 40 C.F.R. § 112.7(k)(2), if qualified.

36. Respondent's Plan did not address the Facility's conformance with either method of compliance for its oil-filled operational equipment, in violation of 40 C.F.R. § 112.7(k) and 40 C.F.R. § 112.7(a)(1).

37. The regulation at 40 C.F.R. § 112.8(a) requires owners or operators of facilities subject to 40 C.F.R. Part 112 to meet the general requirements for the Plan listed under 40 C.F.R. § 112.7.

38. The regulation at 40 C.F.R. § 112.8(c)(2) requires owners or operators of an onshore facility to construct all bulk storage tank installations so that diked areas are sufficiently impervious to contain discharged oil.

39. At the time of the August 2010 inspection, Respondent's Plan failed to document that the diked areas at the Facility were sufficiently impervious to contain discharged oil, in violation of 40 C.F.R. § 112.8(c)(2) and 40 C.F.R. § 112.8(a).

40. As alleged in the preceding paragraphs, and pursuant to Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$16,000 per day for violations that occurred after January 12, 2009, up to a maximum of \$177,500.

Civil Penalty

41. Based on an analysis of the factors set forth in Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), and in the Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act, with respect to the facts of this case, Complainant has determined that an appropriate civil penalty to settle this action is \$28,770.

42. Within 30 days after the effective date of this CAFO, Respondent shall pay a \$28,770 civil penalty by cashier's or certified check, or by electronic funds transfer (ETF). If paying by check, Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311" and the docket number of this case. If the Respondent sends payment by check, the payment shall be addressed to:

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

If paying by EFT Respondent shall transfer \$28,770 to:

Federal Reserve Bank of NY
ABA 021030004
Account 68010727
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the EFT message shall read "D 68010727 Environmental Protection Agency."

43. This civil penalty is not deductible for federal tax purposes.

44. The Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the following persons:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Joseph Ulfig, P.E. (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Andre Daugavietis
Associate Regional Counsel (C-14J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

45. Failure by Respondent to pay timely this civil penalty may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. §1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

General Provisions

46. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

47. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

48. This CAFO does not affect Respondent's responsibility to comply with the SPCC Rules and other applicable federal, state and local laws.

49. Respondent certifies that it is now complying at the Facility with the regulations cited above.

50. The CAFO shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

51. The CAFO does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law.

52. If Respondent fails to comply with this CAFO, Respondent waives any rights it may possess in law or equity to challenge the authority of the EPA to bring a civil action in the appropriate United States District Court to compel compliance with this CAFO and/or seek an additional penalty for non-compliance with the CAFO.

53. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CAFO.

54. The undersigned representative of each Party to this CAFO certifies that he or she is duly authorized by the Party he or she represents to enter into the terms and bind that Party to them.

55. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.

In the Matter of: Yoder Oil Co., Inc. – CAFO

Yoder Oil Co., Inc., Respondent

Date: 7-16-14

Brett Yoder
Brett Yoder
President
Yoder Oil Co., Inc.
Elkhart, Indiana

U.S. Environmental Protection Agency, Complainant

Date: 7-29-14

Richard C. Karl
Richard C. Karl
Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Yoder Oil Co., Inc.

Docket No. CWA-05-2014-0008

FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date: 7-31-2014



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the Matter of: Yoder Oil Co., Inc.

Docket No. CWA-05-2014-0008

Certificate of Service

I, Jarrah P. Sanders, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, U.S. Environmental Protection Agency, Region 5, and mailed a second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing it in the custody of the United States Postal Service addressed as follows:

Brett Yoder
President
Yoder Oil Co., Inc.
1221 N. Nappanee Street
Elkhart, Indiana 46515

Original Copy of the CAFO mailed to

Regional Hearing Clerk
U.S. EPA Region 5

on the 8th day of August, 2014



Jarrah P. Sanders
U.S. Environmental Protection Agency
Region 5