

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Cargill, Inc.
15407 McGinty Road
Wayzata MN, 55391

Cargill Feed and Nutrition -Batavia Plant
8849 Wortendyke Road
Batavia New York 14020

SPDES Permit No. NYR00D040

Respondent

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. §1319(g)

**CONSENT AGREEMENT
AND FINAL ORDER**

DOCKET No. CWA-02-2022-3306

I. PRELIMINARY STATEMENT

1. This is a civil administrative proceeding for the assessment of a civil penalty instituted pursuant to Section 309(g) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. §1319(g).
2. The following Findings of Fact are made and Order issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by the Act, 33 U.S.C. §1251 *et. seq.*, which authority has been duly delegated to the Regional Administrator of Region 2, EPA and since further re-delegated to the Director, Division of Enforcement and Compliance Assistance, Region 2, EPA.
3. EPA is initiating and concluding this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g), and 40 C.F.R. §22.13(b) 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” (“CROP”), which sets forth procedures for simultaneous commencement and conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order pursuant to 40 C.F.R. §§22.18(b)(2) and (3).

II. FINDINGS OF FACT

4. Cargill Inc., (Cargill Feed and Nutrition (Batavia Plant)) (“Respondent”) is a corporation chartered under the laws of the State of Delaware, and as such, the Respondent is a person, as defined in Section 502(5) of the Act, 33 U.S.C. §1362(5), and 40 C.F.R. §122.2.

5. The Respondent owns and operates the Cargill Feed and Nutrition (Batavia Plant) located at 8849 Wortendyke Road, Batavia New York 14020 ("Facility") and is an "owner or operator" within the meaning of 40 C.F.R. §122.2.
6. The Respondent's Facility discharges pollutants associated with industrial activity, including stormwater, from 3 Outfalls to a tributary of Tonawanda Creek. Tonawanda Creek flows into Lake Erie.
7. The Respondent's outfall pipes, are "point sources" within the meaning of Section 502(14) of the Act, 33 U.S.C. §1362(14), discharges stormwater, which is a "pollutant" within the meaning of Section 502(6) of the Act, 33 U.S.C. §1362(6), to the tributary of Tonawanda Creek and ultimately Lake Erie, all waters of the United States within the meaning of 40 C.F.R. §122.2. As such, pollutants have been discharged to navigable waters from a point source within the meaning of Section 502(12) of the Act, 33 U.S.C. §1362(12).
8. Respondent submitted a Notice of Intent ("NOI") to gain coverage under the New York State Department of Environmental Conservation ("NYSDEC") State Pollutant Discharge Elimination System ("SPDES") Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity ("MSGP"), GP-0-12-001, which became effective on October 1, 2012 and expired on September 30, 2017. In 2018 Respondent submitted a NOI to gain coverage under the current MSGP, GP-0-17-004, which became effective on March 1, 2018 and expires on February 28, 2023.
9. On April 1, 2021, the EPA conducted a Compliance Evaluation Inspection ("CEI") of the Respondent's Facility and determined that the Respondent had failed to comply with conditions of the MSGP, in violation of Section 301 and 402 of the Act, 33 U.S.C. §§1311 and 1342, as detailed in EPA's CEI Report and summarized below:
 - a. Failed to maintain records of an Annual Site Compliance Inspection in 2020 as required by Part IV.A of the MSGP;
 - b. Failed to maintain records of Quarterly Visual Monitoring (for five quarters) for the First Quarter of 2020 through the First Quarter of 2021 as required by Part IV.E. of the MSGP;
 - c. Failed to maintain records of Quarterly Routine Inspections (for five quarters) for the First Quarter of 2020 through the First Quarter of 2021 as required by Part IV.B. of the MSGP;
 - d. Failed to maintain records of Annual Dry Weather Monitoring as required by Part IV.C of the MSGP in 2017, 2018, 2020;
 - e. Failed to maintain annual employee training records for 2017, 2018, and 2020 as required by Part II.A.8.b of the MSGP.
10. Based on the Findings cited in the Paragraphs above, the Respondent violated Section 301 of the Act, 33 U.S.C. §1311.

III. CONCLUSIONS OF LAW AND JURISDICTION

11. Section 301(a) of the Act, 33 U.S.C. §1311(a), provides, in part, that the discharge of any pollutants by any person from a point source to a navigable water of the United States shall be unlawful except, inter alia, in accordance with the terms and conditions of a duly issued permit pursuant to Section 402 of the Act, 33 U.S.C. §1342.
12. Section 402 of the Act, 33 U.S.C. §1342, authorizes the Administrator of EPA to issue a National Pollutant Discharge Elimination System ("NPDES") permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the Act and conditions which the Administrator determines are necessary.
13. The NYSDEC is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402(b) of the Act, 33 U.S.C. §1342(b). The EPA maintains concurrent enforcement authority with authorized States for addressing violations of the Act. Additionally, under this authority granted to the NYSDEC by the EPA under Section 402(b) of the Act, 33 U.S.C. §1342(b), facilities are required to obtain a SPDES permit from the NYSDEC for the discharge of pollutants from said facilities' point source(s) to a navigable water of the United States.
14. Section 402(p) of the Act, 33 U.S.C. §1342(p), sets forth the requirements for discharges of stormwater.
15. NYSDEC issued a SPDES MSGP, as defined by general permit number, GP-0-12-001, on October 1, 2012, and it expired on September 30, 2017. NYSDEC then issued the current MSGP, as defined by general permit number, GP-0-17-004, on March 1, 2018, and it expires on February 28, 2023.
16. The Administrator of EPA has promulgated regulations, 40 C.F.R. §122.26(a)(1)(ii) and §122.26(b)(14), which require operators to obtain a NPDES permit for stormwater discharges associated with industrial activity. The regulations at 40 C.F.R. §122.26(b)(14) establish requirements for stormwater discharges associated with industrial activity.
17. The Respondent's Facility is subject to the NPDES requirements pursuant to Section 402 of the Act, 33 U.S.C. §1342, and Section 301(a) of the Act, 33 U.S.C. §1311(a).
18. Based upon the Findings of Fact set forth above, the Respondent operated the Facility in violation of Sections 301 and 402 of the Act.
19. EPA has jurisdiction over the subject matter of this action, pursuant to Section 309 of the Act, 33 U.S.C. §1319, and over the Respondent.

IV. CONSENT AGREEMENT

20. Paragraphs 1 through 19, above, are re-alleged and incorporated herein by reference.
21. The EPA and the Respondent agree that it is in the public interest to resolve the issues alleged in this Consent Agreement without further litigation and the expense and effort that litigation entails.

22. Based upon the foregoing and pursuant to Section 309(g) of the Act, 33 U.S.C. §1319(g), and the CROP, it is hereby agreed by and between EPA and the Respondent, and the Respondent voluntarily and knowingly agrees as follows:

V. TERMS OF SETTLEMENT

23. For the purpose of this proceeding, the Respondent:
- a. Admits the jurisdictional allegations of this Consent Agreement and Final Order (“CA/FO”);
 - b. Neither admits or denies the factual allegations contained herein;
 - c. Waives its right to contest the allegations, at a judicial or administrative hearing, or to appeal this CA/FO; and
 - d. Consents to the payment of the civil penalty in the amount of **Eight Thousand Eight Hundred Dollars (\$8,800)**, as stated in Section VI, below.

VI. PAYMENT OF CIVIL PENALTY

24. The Respondent shall pay a civil penalty in the amount of **Eight Thousand Eight Hundred Dollars (\$8,800)**, to the “Treasurer of the United States of America.”
25. Payments can be made by debit/credit card, check, or electronically. Electronic payments fall into two categories: wires and Automated Clearinghouse (ACH). Wires are same day and more costly. ACH is the next day or any future scheduled day and is less expensive. Please note that wires and ACH payments must be conducted through the sender's bank. The checks (cashier's or certified checks only) shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Payment methods are described below:

Type of Payment	Payment Information		
Debit and Credit Card Payments	https://www.pav.gov/pavgov/		
Checks from U.S. Banks		U.S. Postal Service	UPS, Federal Express, or Overnight Mail
Finance Center Contacts: Craig Steffen (513-487-2091)	Check Payments – Fines and Penalties	US Environmental Protection Agency Fines and Penalties Cincinnati Finance Center PO Box 979077 St. Louis, MO 63197-9000	U.S. Bank Government Lockbox 979077 US EPA Fines & Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, MO 63101 314-418-1028 Contact: Natalie Pearson

	314-418-4087
Checks drawn on foreign banks with no USA branches (any currency)	Cincinnati Finance US EPA, MS-NWD 26 W ML King Drive Cincinnati, OH 45268-0001
Wire Transfers (any currency)	Federal Reserve Bank of New York ABA: 021030004 Account Number: 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"
ACH - Automated Clearinghouse for receiving US currency Finance Center Contacts:	US Treasury REX / Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking
John Schmid (202-874-7026)	Physical location of US Treasury facility: 5700 Rivertech Court Riverdale, MD 20737
REX (Remittance Express) 1-866-234-5681	

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Department 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.

The Respondent shall also send copies of this payment to each of the following by email:

Douglas McKenna, Branch Chief
Water Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. EPA, Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866
Email: McKenna.Douglas@epa.gov

and
Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007

Email: Maples.Karen@epa.gov

The payment must be received at the above address on or before thirty (30) calendar days after the date of receipt of the Final Order (the date by which payment must be received shall hereafter be referred to as the "due date").

26. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for Collection.
27. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. §3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.
28. In addition, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. §1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties, which are unpaid as of the beginning of such quarter. You also may be required to pay attorney's fees and costs for collection proceedings in connection with nonpayment.
29. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent's federal or State taxes.

VII. GENERAL PROVISIONS

30. Upon execution by the parties, this Agreement shall be subject to a public comment period of not less than thirty (30) days, pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. §1319(g)(4)(A) and 40 C.F.R. §22.45. The EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations indicating that the Agreement is inappropriate, improper, or inadequate.
31. If comments during the public comment period do not require modification or withdrawal by the EPA from this Agreement, the parties agree to submit this Agreement to the Director of the Division of Enforcement and Compliance Assistance ten (10) days after closure of the public comment period, with a request that it be incorporated into a final order.
32. The provisions of this CA/FO shall be binding upon the Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve the Respondent of its obligation to comply with this CA/FO.
33. The Respondent waives any right it may have pursuant to 40 C.F.R. §22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director or the Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to

recommend that such official accept this Consent Agreement and issue the accompanying Final Order.

34. Except for the specific violations alleged herein, nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of the EPA to seek any other remedies or sanctions available by virtue of the Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.
35. This CA/FO shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
36. This CA/FO constitutes a settlement by the EPA of all claims for civil penalties pursuant to the Act for the violations by the Respondent alleged herein. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by the EPA, and it is the responsibility of the Respondent to comply with such laws and regulations.
37. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
38. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.

For the Respondent: Cargill Inc. hereby consents to the issuance of the ORDER and agrees to be bound thereby.

BY: 

DATE: 1/3/2022

**Chapin Guthrie, Plant Manager
Cargill Feed and Nutrition, Batavia**

For the Complainant, the United States Environmental Protection Agency

McKenna,
Douglas

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McKenna, Douglas
Date: 2022.03.22
12:30:53 -04'00'

BY:

DATE: March 22, 2022

Dore LaPosta, Director

For Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

VIII. FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency, Region 2, vested by authority delegated by the Administrator of the United States Environmental Protection Agency ("EPA") and having further re-delegated such authority to the Division of Enforcement and Compliance Assistance, Region 2, EPA, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.

DATED: 3/22/2022

**McKenna,
Douglas**

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Douglas
Date: 2022.03.22 12:30:34
-04'00'

For _____
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866