

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

UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION 7  
2014 JUN 12 AM 9: 50

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
Fiberight-Blairstown Operating LLC	)	Docket No. CWA-07-2014-0001
	)	
Respondent	)	COMPLAINT AND
	)	CONSENT AGREEMENT/
Proceedings under Sections 309(g) and	)	FINAL ORDER
311(b)(6) of the Clean Water Act,	)	
33 U.S.C. §§ 1319(g) and 1321(b)(6)	)	
_____	)	

**COMPLAINT**

**Jurisdiction**

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Sections 309(g) and 311(b)(6) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. §§ 1319(g) and 1321(b)(6), as amended by the Oil Pollution Act of 1990, and in accordance with 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.

2. Complainant, the United States Environmental Protection Agency, Region 7 (EPA) and Respondent, Fiberight-Blairstown Operating LLC, 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 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) and (3).

3. This Complaint and Consent Agreement/Final Order (CAFO) serves as notice that the EPA has reason to believe that Respondent has violated Sections 301, 311 and 402 of the CWA, 33 U.S.C. §§ 1311, 1321 and 1342, and regulations promulgated thereunder.

**Parties**

4. The authority to take action under Sections 309(g) and 311(b)(6) of the CWA, 33 U.S.C. §§ 1319(g) and 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 the authority under Section 309(g) to the Director of the Water, Wetlands and

Pesticides Division of EPA, Region 7, and the authority under Section 311(b)(6) to the Director of the Air and Waste Management Division (collectively referred to as the Complainant).

5. Respondent, Fiberight-Blairstown Operating LLC, is and was at all relevant times a limited liability corporation under the laws of Delaware and authorized to conduct business in the State of Iowa.

6. Respondent is a “person” as defined by 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.

### **Statutory and Regulatory Framework**

#### **Prohibition against Discharges**

7. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA, provides that pollutants may be discharged in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

8. The CWA prohibits the “discharge” of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

#### **Stormwater**

9. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater. Section 402(p) of the CWA requires, in part, that a discharge of stormwater associated with an industrial activity must conform with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

10. Pursuant to Section 402(p) of the CWA, the EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

11. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

12. 40 C.F.R. § 122.26(b)(14)(ii) defines “stormwater discharge associated with industrial activity,” in part, as discharges from facilities classified as Standard Industrial Classification 2869 (Industrial Organic Chemicals).

13. The Iowa Department of Natural Resources (IDNR) is the state agency with the authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the CWA. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

14. IDNR issued and implemented NPDES General Permit No. 1 for stormwater discharges associated with industrial activity effective October 1, 2005, with an expiration date of October 1, 2007. IDNR reissued the permit with an effective date of October 1, 2007, and an expiration date of 2012, and thereafter reissued the permit again with an effective date of October 1, 2012, and an expiration date of October 1, 2017.

15. Any individual seeking coverage under NPDES General Permit No. 1 is required to submit a Notice of Intent (NOI) to IDNR in accordance with the requirements of Part II.C of the Permit. As required by Section III.C.1, a Stormwater Pollution Prevention Plan (SWPPP), which includes at least the minimum requirements set forth in Section III.C.4 of the Permit, must be completed and maintained on site before the NOI is submitted to IDNR and fully implemented concurrently with operations at the facility.

### **Spill Prevention Control and Countermeasures**

16. 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) of the CWA, 33 U.S.C. § 1321(j), provides in part that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges.”

17. To implement Section 311(j), 33 U.S.C. § 1321(j), the EPA promulgated regulations to prevent oil pollution. These regulations, codified at 40 C.F.R. Part 112, set forth the requirements for the preparation and implementation of a Spill Prevention Control and Countermeasure Plan (SPCC Plan).

18. More specifically, under the authority of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), 40 C.F.R. Part 112 establishes procedures, methods and equipment and other requirements to prevent the discharge of oil from non-transportation-related onshore facilities into or upon the navigable waters of the United States or adjoining shorelines.

19. The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products, which due to their location, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines.

20. Further, under 40 C.F.R. Part 112, owners or operators of onshore facilities that have an aboveground storage capacity of more than 1,320 gallons of oil, and due to their location could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, must prepare a SPCC Plan in writing, certified by a licensed Professional Engineer, and in accordance with the requirements of 40 C.F.R. § 112.7.

## **General Allegations**

### **Stormwater**

21. Respondent is and was at all times relevant to this action the owner and/or operator of a facility known as Fiberight Blairstown Operation, LLC, located at 2154 78<sup>th</sup> Street, Blairstown, Iowa 52209 (Facility), operating under SIC code 2869.

22. Stormwater, snow melt, surface drainage and runoff water leaves Respondent's facility and flows into Coon Creek. The runoff and drainage from Respondent's facility is "stormwater" as defined by 40 C.F.R. § 122.26(b)(13).

23. Stormwater contains "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

24. The Facility has "stormwater discharges associated with industrial activity" as defined by 40 C.F.R. § 122.26(b)(14)(x), and is a "point source" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

25. Coon Creek is a "navigable water" as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

26. Stormwater runoff from Respondent's industrial activity results in the addition of pollutants from a point source to navigable waters, and thus is the "discharge of a pollutant" as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

27. Respondent's discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(ii), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

28. After receipt of a NOI from Xethanol Biofuels, LLC, dated May 13, 2005, IDNR extended coverage under NPDES General Permit No. 1, Permit Authorization No. IA-9375-9178, on May 20, 2005, to Xethanol Biofuels, LLC, which at that time owned and operated the facility located at 2154 78<sup>th</sup> Street, Blairstown, Iowa 52209. IDNR issued annual extensions of the Permit to Xethanol Biofuels, LLC, through May 20, 2011. The permit governs stormwater discharges associated with industrial activity.

29. Xethanol Biofuels, LLC, sold the facility located at 2154 78<sup>th</sup> Street, Blairstown, Iowa 52209 to Respondent in approximately October 2009.

30. After written request by Respondent to the IDNR, dated February 9, 2010, and submission of a permit renewal application in approximately May 2011, the IDNR issued NPDES General Permit No. 1, Authorization No. IA-9375-9178, to Respondent with an expiration date of May 20, 2012. The Permit has subsequently been reissued to Respondent annually, with a current expiration date of May 20, 2014. Respondent has operated under the NPDES permit at all times relevant to this Complaint.

31. On December 6 and 7, 2011, the EPA performed an inspection of the Facility (Inspection) under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the Inspection was to evaluate the facility's compliance with the CWA, including its management of stormwater at the Facility.

32. During the Inspection, the EPA inspector issued to Respondent a Notice of Potential Violation (NOPV) identifying issues that may be violations of Respondent's NPDES General Permit No. 1, including but not limited to, lack of documentation required by the Permit for employee annual stormwater training, annual stormwater site evaluations and an inventory of onsite equipment for spill response and countermeasure; and the SWPPP did not accurately describe best management practices, preventative maintenance and/or good housekeeping practices specific to the Facility.

33. By letter and electronic mail dated December 19, 2011, Respondent provided comments and documents to the EPA inspector regarding its efforts to address stormwater concerns identified in the NOPV. By electronic mail dated January 11, 2012, Respondent provided additional comments and documents to the EPA inspector.

#### SPCC

34. Respondent is and was at all times relevant to this action the "owner or operator," within the meaning of 40 C.F.R. § 112.2 and Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), of a plant producing and storing denatured ethanol located at 2154 78<sup>th</sup> Street, Blairstown, Iowa 52209 (the Facility).

35. The Facility is located approximately 2000 feet from Coon Creek.

36. At all relevant times, Respondent's facility included seven aboveground tanks for containment of denaturant and denatured ethanol with an aggregate aboveground storage capacity of 1,320 gallons or more of oil, each of which has a shell capacity of at least 55 gallons.

37. Coon Creek is a "navigable water of the United States" as defined by 40 C.F.R. § 112.2 and Section 502(7) of the CWA, 33 U.S.C § 1362(7).

38. Respondent's facility is an "onshore facility" within the meaning of 40 C.F.R. § 112.2 and Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

39. Respondent's facility is a "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.

40. Respondent's facility was engaged in the production and storage of denatured ethanol.

41. Denaturant and denatured ethanol are forms of oil as defined by 40 C.F.R. § 112.2 and Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).

42. 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).

43. Pursuant to the CWA and 40 C.F.R. § 112.1, Respondent, as the owner and operator of an SPCC-regulated facility, is subject to the SPCC regulations.

44. During the December 2011 Inspection, the EPA inspector noted that the facility was subject to the SPCC regulations at 40 C.F.R. Part 112 and included in the NOPV his observation that Respondent did not have an SPCC plan certified by a professional engineer, as required by 40 C.F.R. Part 112.

45. By letter and electronic mail dated December 19, 2011, Respondent provided comments and documents to the EPA inspector regarding its efforts to address SPCC concerns identified in the NOPV.

46. By letters dated June 21 and July 10, 2012, the EPA requested information from Respondent, pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a), regarding its SPCC program.

47. Following an extension of time to respond granted to Respondent by the EPA, the Respondent submitted a response to the EPA's Section 308(a) request for information by letter dated August 24, 2012, including a copy of its SPCC plan entitled Fiberight SPCC, Spill Prevention Control Countermeasures, December 2011. Respondent's letter stated that the SPCC plan was temporary and had been initiated pending a formal plan to be prepared by a licensed professional engineer.

48. On or about July 25, 2013, an EPA inspector visited Respondent's facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to assess the facility's compliance with the Facility Response Plan (FRP) requirements of Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), and regulations at 40 C.F.R. Part 20, Subpart D (FRP site visit). The EPA inspector requested a copy of the SPCC plan for review. Respondent's personnel at the facility could not locate and produce a copy of the SPCC plan during the FRP site visit.

49. By letter dated July 30, 2013, the Respondent submitted to the EPA inspector additional information regarding the FRP site visit, including a copy of the SPCC plan entitled Fiberight SPCC, Spill Prevention Control Countermeasures, December 2011.

#### **October 2010 Discharge**

50. On or about October 12, 2010, IDNR Field Office #1 received a citizen complaint regarding discoloration of, and a strong chemical scent emanating from, Coon Creek and/or one of its tributaries.

51. On or about October 13, 2010, IDNR Field Office #1 began an investigation of the reported complaint for Coon Creek and its tributaries near Respondent's facility, including one

or more site visits, sample collection and analysis, and correspondence with Respondent. Respondent's correspondence with the IDNR dated December 2, 2010, confirmed the discharge of ethanol from its facility on or about October 13, 2010.

52. On or about December 30, 2010, IDNR Field Office #1 issued a Notice of Violation and Report of Investigation to Respondent, concluding that Respondent discharged pollutants, including ethanol and ethanol byproducts, into Coon Creek and its tributary, and that the discharge violated state water quality standards at 567 Iowa Administrative Code (IAC) 61.3(2).

### **Specific Allegations**

53. For each of the following Counts, Paragraphs 1 through 52 above are re-alleged and incorporated herein by reference.

#### **Count 1**

##### **Failure to Develop an Adequate SWPPP**

54. NPDES General Permit No. 1, applicable to Respondent since its purchase of the facility in approximately October 2009, requires in Section III.C that each facility covered by the permit shall develop a storm water pollution prevention plan, referred to as the SWPPP, appropriate to the facility and, pursuant to Section III.C.1.A, the facility must fully implement those controls concurrently with operations at the facility.

55. Part III, Section C.4 of Respondent's permit requires that a site specific SWPPP be developed for each facility covered by the permit. At a minimum the plan must include the items set forth in Part III, Section C.4 of the permit, including but not limited to:

- a. Section C.4.A, a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges;
- b. Section C.4.A.(1), a site map showing an outline of the drainage area of each storm water outfall, each existing structural control measure to reduce pollutants in stormwater runoff, and each surface water body;
- c. Section C.4.A.(4), for each area of the plant that generates stormwater associated with industrial activity with a reasonable potential for containing significant amounts of pollution, a prediction of the direction of flow and an estimate of the types of pollutants likely to be present in stormwater discharges;
- d. Section C.4.B.(2), an assessment of the potential of various sources at the plant to contribute pollutants to storm water discharges associated with industrial activity and an inventory of the types of materials handled;
- e. Section C.4.B.(3), a description of a preventative maintenance program that involves storm water management devices as well as inspecting and testing plant

equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters; and

f. Section C.4.B.(4), a description of good housekeeping practices in order to maintain a clean, orderly facility.

56. During the EPA Inspection referenced above, the EPA inspector received from the Respondent a copy of the SWPPP for the facility. By electronic mail submittals of December 19, 2011, and January 11, 2012, Respondent provided the EPA inspector copies of revisions to its SWPPP.

57. The EPA Inspection, and documents submitted by the Respondent to the EPA inspector following the EPA inspection, revealed that during the time period from its purchase of the facility in approximately October 2009 until the EPA Inspection in December 2011, Respondent had failed to develop an adequate SWPPP; specifically, Respondent's SWPPP was generic in nature, with few details specific to the facility. Respondent's SWPPP failed to include provisions required by Part III, Section C.4. of its permit, including among other things, a description of potential sources which may reasonably be expected to add significant amounts of pollutants to stormwater discharges; a site-map, a prediction of the direction of flow and an estimate of the types of pollutants likely to be present in stormwater discharges; an assessment of the potential of various sources to contribute pollutants to stormwater discharges and an inventory of the types of materials handled; a description of a preventative maintenance program; and a description of good housekeeping practices.

58. Respondent's failure to develop an adequate SWPPP is a violation of Respondent's permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulations.

59. As alleged in the preceding paragraph, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

## **Count 2**

### **Failure to Conduct Employee Training Regarding the SWPPP**

60. Part III, Section C.4.B.(8) of Respondent's permit requires the SWPPP to include employee training programs to inform personnel at all levels of responsibility of the components and goals of the SWPPP and to identify periodic dates for such training.

61. EPA Inspection documented that Respondent had not included within the SWPPP any details regarding an employee training program specific to the facility and had either failed to conduct annual employee training during the time period from its purchase of the facility in approximately October 2009 until the EPA inspection in December 2011 or had failed to maintain records of such training.

62. Respondent's failure to include an employee training program in the SWPPP and its failure to conduct employee training during the time period from its purchase of the facility in approximately October 2009 until the EPA inspection in December 2011 is a violation of Respondent's permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulations.

63. As alleged in the preceding paragraph, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

### **Count 3**

#### **Failure to Conduct/Inspect Stormwater Controls**

64. Part III, Section C.4.C., of Respondent's permit requires qualified personnel to inspect designated equipment and plant areas at appropriate intervals, as designated in the SWPPP, but in no case less than once a year.

65. Part III, Section C.4.B.(9), of Respondent's permit requires records to be maintained of incidents such as spills or other discharges, inspections and maintenance activities.

66. The EPA Inspection revealed that Respondent failed to conduct visual inspections during the time period from its purchase of the facility in approximately October 2009 until the EPA inspection in December 2011 or failed to maintain records of its visual inspection, as required by Respondent's permit.

67. Respondent's failure to conduct site inspections at least once each year during the time period from its purchase of the facility in approximately October 2009 until the EPA Inspection in December 2011, or alternatively, failure to maintain records of such site inspections, is a failure of the Respondent to implement the SWPPP and is a violation of Respondent's NPDES permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulations.

68. As alleged in the preceding paragraph, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

### **Count 4**

#### **Failure to Prepare and Implement an Adequate SPCC Plan**

69. 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated facility that becomes operational after August 16, 2002, through November 10, 2011, must on or before November 11, 2011, prepare 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, that is certified by a licensed Professional Engineer as required by 40 C.F.R. § 112.3(d), and implement the SPCC plan.

70. During the December 2011 EPA Inspection, the EPA inspector obtained from Respondent a copy of a document entitled Fiberight Spill/Loss Control Health & Safety Measures, December 2009. The document included chapter 3, Hazardous Spill Prevention Control and Countermeasures Program. Chapter 3 was very generic in nature, included minimal information specific to Respondent's facility, was not certified by a licensed Professional Engineer and failed to include provisions required by 40 C.F.R. Part 112.

71. Respondent's August 2012 response to the 308 request referenced in Paragraph 47 above included:

a. a statement that it began operations at the facility in May 2010; and

b. a copy of an intermediate SPCC plan entitled Fiberight SPCC, Spill Prevention Control Countermeasures, December 2011. The December 2011 SPCC plan included a limited amount of information specific to Respondent's facility, and did not include all provisions required by 40 C.F.R. Part 112.

72. Following the July 2013 FRP site visit referenced above, Respondent submitted to the EPA inspector, by letter dated July 30, 2013, a copy of the SPCC plan entitled Fiberight SPCC, Spill Prevention Control Countermeasures, December 2011. The December 2011 SPCC plan included a limited amount of information specific to Respondent's facility, and did not include all provisions required by 40 C.F.R. Part 112.

73. The December 2011 EPA Inspection, Respondent's August 2012 response to the 308 request, and the July 2013 FRP site visit, reveal that Respondent failed to prepare and implement an adequate SPCC plan for the facility in accordance with 40 C.F.R. Part 112 on or before November 11, 2011. Respondent's failure continued until at least July 30, 2013.

74. Respondent's failure to prepare and implement an adequate SPCC plan for the facility on or before November 11, 2011, is a violation of 40 C.F.R. § 112.3, and as such, is a violation of Section 311 of the CWA, 33 U.S.C. § 1321.

75. As alleged in the preceding paragraph, and pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

#### **Count 5**

##### **Failure to Conduct Employee Training Regarding SPCC Plan**

76. 40 C.F.R. § 112.7(f)(1) requires that the owner or operator of an SPCC-regulated facility must at a minimum, train its oil-handling personnel in the operation and maintenance of

equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules and regulations; general facility operations; and the contents of the facility SPCC Plan.

77. 40 C.F.R. § 112.7(f)(3) requires that discharge prevention briefings for oil-handling personnel must be scheduled and conducted at least once a year to assure adequate understanding of the SPCC Plan for the facility. Such briefings must highlight and describe known discharges as described in 40 C.F.R. § 112.1(b) or failures, malfunctioning components, and any recently developed precautionary measures.

78. The December 2011 EPA Inspection referenced above, revealed that Respondent had failed to train its oil-handling personnel or conduct discharge prevention briefings for its oil-handling personnel as required by 40 C.F.R. § 112.7(f)(1) and (3).

79. Respondent's failure to provide discharge prevention briefings for oil-handling personnel is a violation of 40 C.F.R. § 112.7(f)(1) and (3), and as such, is a violation of Sections 311 of the CWA, 33 U.S.C. § 1321.

80. As alleged in the preceding paragraph, and pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

### **Count 6**

#### **October 2010 Discharges in Violation of Clean Water Act**

81. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with the CWA, including in compliance with a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

82. Respondent discharged pollutants on October 12 and 13, 2010, including ethanol and/or ethanol byproducts, into or upon Coon Creek, as observed, sampled and reported by the IDNR inspector, and verified by Respondent in correspondence to the IDNR dated on or about December 2, 2010. Respondent has no permit authorizing such discharge.

83. Respondent's October 2010 discharge without a permit of pollutants, including ethanol and ethanol byproducts, is a violation of Sections 301(a) of the CWA, 33 U.S.C. § 1311(a), and implementing regulations.

84. As alleged in the preceding paragraphs, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

## CONSENT AGREEMENT

85. Respondent and EPA agree to the terms of this CAFO and Respondent consents for the purposes of settlement to the payment of the civil administrative penalties of \$17,500 for Counts 1, 2, 3 and 6 and of \$17,500 for Counts 4 and 5, as set forth above.

86. 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.

87. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by the EPA in the Factual Background and Findings of Violation sections set forth above.

88. 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 the Final Order portion of this CAFO.

89. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

90. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

91. Nothing contained in the Final Order portion of 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.

92. This CAFO addresses all civil and administrative claims for the CWA violations 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.

93. Respondent certifies by the signing of this CAFO that its facility is in compliance with all requirements of Sections 301, 311 and 402 of the CWA, 33 U.S.C. §§ 1311, 1321 and 1342.

94. The effect of settlement described in Paragraph 92 above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in Paragraph 93 above, of this CAFO.

95. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil penalty and any accrued interest are paid in full. A late

payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charge for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

### **FINAL ORDER**

Pursuant to the authority of Sections 309(g) and 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. §§ 1319(g) and 1321(b)(6)(B)(ii), and according to terms of this CAFO, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty related to Counts 1, 2, 3 and 6 of this CAFO of Seventeen Thousand Five Hundred Dollars (\$17,500) pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to be paid in full no later than 30 days after the effective date of this CAFO. The payment of penalties must reference docket number "CWA-07-2014-0001" and be remitted using one of the payment methods specified in Appendix A to this Order.

2. Respondent shall pay a civil penalty related to Counts 4 and 5 of this CAFO of Seventeen Thousand Five Hundred Dollars (\$17,500) pursuant to the authority of Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), to be paid in full no later than 30 days after the effective date of this CAFO. The payment of penalties must reference docket number "CWA-07-2014-0001 - OSLTF" and be remitted using one of the payment methods specified in Appendix A to this Order.

3. Copies of the checks or verification of another payment method for the penalty payments remitted as directed by Paragraphs 1 and 2 above, shall be mailed to:

Patricia Gillispie Miller  
Senior Counsel  
U.S. Environmental Protection Agency – Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

and to

Kathy Robinson  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

4. 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. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest thereon.

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

6. Respondent and Complainant shall pay their own costs and attorneys' fees incurred as a result of this action.

7. EPA reserves the right to enforce the terms of this Final Order by initiating a judicial or administrative action pursuant to Sections 309 and 311 of the CWA, 33 U.S.C. §§ 1319 and 1321.

8. With respect to matters not addressed in this Final Order, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and for punitive damages.

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

10. This CAFO shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Sections 309(g)(4) and 311(b)(6)(C)(i) of the CWA, 33 U.S.C. §§ 1319(g)(4) and 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45, and receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

11. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

FOR THE COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

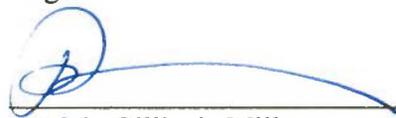
6-10-14  
Date

  
\_\_\_\_\_  
Karen A. Flournoy  
Director  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency  
Region 7

6/10/14  
Date

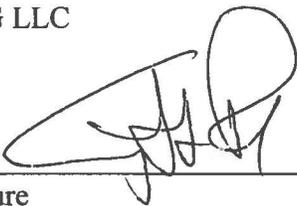
  
\_\_\_\_\_  
Rebecca Weber  
Director  
Air and Waste Management Division  
U.S. Environmental Protection Agency  
Region 7

6/9/2014  
Date

  
\_\_\_\_\_  
Patricia Gillispie Miller  
Senior Counsel  
U.S. Environmental Protection Agency  
Region 7

FOR THE RESPONDENT:  
FIBERIGHT-BLAIRSTOWN OPERATING LLC

April 2, 2014  
Date

  
Signature

CRAIG STUART-PAUL  
Name (Print)

CEO  
Title

IT IS SO ORDERED. This Final Order shall become effective immediately.

6-12-14  
Date

Karina Boromeo  
Karina Boromeo  
Regional Judicial Officer

IN THE MATTER Of Fiberight-Blairstown Operating LLC, Respondent  
Docket No. CWA-07-2014-0001

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:

miller.patriciag@epa.gov

Copy by First Class Mail to Respondent:

**Julie Dyce Plume**  
Fiberight, LLC  
1450 South Rolling Road  
Baltimore, MD 21227

Dated: 6/12/14

  
\_\_\_\_\_  
Kathy Robinson  
Hearing Clerk, Region 7