

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In The Matter Of:)	Docket No. CWA-05-2024-0012
)	
Bunge North America, Inc.)	Proceeding to Assess a Class II Civil Penalty
Cairo, IL)	Under Section 311(b)(6) of the Clean Water
)	Act, 33 U.S.C. § 1321(b)(6)
<u>Respondent.</u>)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 311(b)(6)(A)(i) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6)(A)(i), and Sections 22.1(a)(6), 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. Complainant is the Director of the Superfund & Emergency Management Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Bunge North America, Inc. (Bunge), a corporation doing business in the State of Illinois.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 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 terms of this CAFO, including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Judicial Review and Hearing

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

8. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including its right to request a hearing under 40 C.F.R. § 22.15(c) and Section 311(b)(6)(B)(ii), 33 U.S.C. § 1321(b)(6)(B)(ii); its right to seek federal judicial review under Section 311(b)(6)(G) of the CWA, 33 U.S.C. § 1321(b)(6)(G), and Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; any right to contest the allegations in this CAFO; and its right to appeal this CAFO.

Statutory and Regulatory Background

Prohibition of oil or hazardous substance discharges

9. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil or hazardous substances into or upon, among other things, the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

General provisions and enforcement of the CWA

10. Pursuant to Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), and Executive Order 11735 (Aug. 3, 1973), EPA determined by regulation the quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare or environment of the United States, which are codified at 40 C.F.R. Part 110. Under 40 C.F.R. § 110.3, discharges of oil which may be harmful include discharges of oil that: (a) violate applicable water quality standards; or (b) cause a film or sheen upon or discoloration of the surface of the water or adjoining

shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

11. Appendix A to 40 C.F.R. Part 112, Memorandum of Understanding between the Secretary of Transportation and EPA, defines “non-transportation-related” facility to include: oil production facilities including all equipment and appurtenances related thereto; oil refining facilities including all equipment and appurtenances related thereto; oil storage facilities including all equipment and appurtenances related thereto, as well as fixed bulk plant storage and terminal oil storage facilities; industrial, commercial, agricultural or public facilities which use and store oil; and waste treatment facilities, including in-plant pipelines, effluent discharge lines, and storage tanks.

12. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as the waters of the United States, including the territorial seas. The regulations at 40 C.F.R. § 112.2 further define “navigable waters” to include: all navigable waters of the United States, as defined in judicial decisions prior to passage of the 1972 Amendments to the CWA and tributaries of such waters; interstate waters; intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; and intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce.

13. Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2, define “onshore facility” as any facility of any kind located in, on, or under any land within the United States, other than submerged land.

14. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2, define ‘oil’ as 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.

15. Section 311(a)(6)(B) of the CWA, 33 U.S.C. § 1321(a)(6)(B), and 40 C.F.R. § 112.2, define “owner or operator” in the case of an onshore facility as any person owning or operating such onshore facility.

16. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2, define “person” as including an individual, firm, corporation, association, and a partnership.

17. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), and 40 C.F.R. § 112.2 define “discharge” to include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

18. EPA may assess a class II civil penalty against any owner, operator, or person in charge of any onshore facility from which oil is discharged in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), pursuant to Section 311(b)(6)(A)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(A)(i).

19. For violations of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), EPA has authority, under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), as amended by the Debt Collection Improvement Act and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, and implemented by 40 C.F.R. Part 19, Adjustment of Civil Monetary Penalties for Inflation, to file an Administrative Complaint seeking a civil penalty of \$23,048 per day of violation or an amount up to \$2,304 per barrel of oil, up to a maximum of \$288,080 for violations occurring after November 2, 2015 and penalties assessed after December 27, 2023.

Factual Allegations and Alleged Violations

20. Respondent owns and operates a soybean oil production, storage, and distribution facility located at 203 34th Street, Cairo, Illinois (“Facility”).

21. Respondent is a corporation, and is therefore a “person” as defined in Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7) and 40 C.F.R. § 112.2.

22. Respondent is an “owner” and “operator” of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.

23. The Facility is located on land within the United States and is therefore an “onshore facility” as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

24. The Ohio River is a “navigable water” of the United States within the meaning of 40 C.F.R. § 112.2 (2015).

25. On or around February 2, 2022, Respondent discharged approximately 20,000 gallons of mixed soybean oil and water into the Ohio River.

26. On June 17, 2022, EPA issued the Respondent a request for information pursuant to Section 308 of the CWA, 33 U.S.C. § 1318. On July 14, 2022, Respondent submitted a response to EPA’s information request.

27. In Respondent’s information request response, Respondent estimated that 20,000 gallons of mixed soybean oil and water was discharged into the Ohio River on or around February 2, 2022.

28. Respondent’s discharge of soybean oil and water from the Facility caused a film or sheen upon or discoloration of the surface of the Ohio River, a navigable water.

29. Under 40 C.F.R. § 110.3, discharges of oil in such quantities that the Administrator has determined may be harmful to the public health or welfare or the environment of the United States for the purposes of Section 311(b)(4) of the CWA include discharges of oil that causes a film or sheen upon or discoloration of the surface of the water or adjoining shoreline.

30. Respondent's discharge of soybean oil and water was a discharge of oil into or upon navigable waters of the United States in such quantities as may be harmful, in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

Civil Penalty

31. Based on analysis of the factors specified in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), the facts of this case, and the *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act*, dated August 1998, Complainant has determined that an appropriate civil penalty to settle this action is \$91,418.

32. Respondent agrees to pay a civil penalty in the amount of \$91,418 ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this consent agreement becomes final. The Final Order shall become final thirty (30) days after the date the Final Order ratifying this agreement is filed with the Regional Hearing Clerk ("Filing Date").

33. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. Additional instructions for making payments are available at: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

34. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name, "OSLTF-311", and the docket number of this Agreement, CWA-05-2024-0012.

- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following persons:

Juliane Grange
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
R5HearingClerk@epa.gov

Silvia Palomo
Superfund and Emergency Management Division
U.S. Environmental Protection Agency, Region 5
palomo.silvia@epa.gov

Kevin Chow
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
chow.kevin@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
via electronic mail to:
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number of Respondent’s name.

35. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C. § 1321(b)(6)(H), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will

continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1321(b)(6)(H). The rate of interest is the IRS standard underpayment rate.

- b. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of collection proceedings.
- c. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.

36. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following:

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 131.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, per 33 U.S.C. § 1321(b)(6)(H). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

37. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

38. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

39. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at wise.milton@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via

email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

General Provisions

40. The parties consent to service of this CAFO by email at the following email addresses: chow.kevin@epa.gov (for Complainant) and beverly.garner@bunge.com (for Respondent). Respondent understands that the CAFO will become publicly available upon proposal for public comment and upon filing.

41. Full payment of the penalty as described in Paragraph 32 above, and full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

42. Full payment of a penalty described in Paragraph 32 above, and full compliance with this CAFO shall not in any case affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

43. This CAFO does not affect Respondent's responsibility to comply with the CWA and other applicable federal, state, or local laws and permits.

44. Respondent certifies that it is complying with Section 311 of the CWA, 33 U.S.C. § 1321 and its implementing regulations.

45. This CAFO constitutes a "prior violation" as that term is used in EPA's *Civil Penalty Policy for Section 311(b)(3) of the Clean Water Act* to determine Respondent's "history of prior violations" under Section 311(b)(8) of the CWA 33 U.S.C. § 1321(b)(8).

46. The terms of this CAFO bind Respondent and its successors and assigns.

47. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CAFO.

48. Each party agrees to bear its own costs and attorney fees in this action.

49. This CAFO constitutes the entire agreement between the parties.

50. The parties acknowledge and agree that final approval by EPA of this CAFO is subject to Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i) which provides, among other procedural requirements, public notice and a reasonable opportunity to comment on any proposed penalty order.

51. The parties acknowledge and agree that final approval by EPA of this CAFO is subject to 40 C.F.R. § 22.45(c)(4) which sets forth requirements under which a person not a party to this proceeding may petition to set aside a consent agreement and final order on the basis that material evidence was not considered.

52. Unless an appeal for judicial review is filed in accordance with Section 311(b)(6)(G) of the CWA, 33 U.S.C. § 1321(b)(6)(G) or 40 C.F.R. § 22.45, this CAFO shall become effective 30 days after the date of issuance, which is the date that the Final Order contained in this CAFO is signed by the Regional Judicial Officer or Regional Administrator. The effective date for this CAFO is thirty days after it is filed with the Regional Hearing Clerk, which is after completion of the notice and comment requirements of Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i) and 40 C.F.R. §§ 22.38, 22.45.

Consent Agreement and Final Order
In the Matter of: Bunge North America, Inc.
Docket No. CWA-05-2024-0012

Bunge North America, Inc., Respondent

6/14/2024

Date

DocuSigned by:
Diego Rasteletti
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Diego Rasteletti
Commercial Vice President-North America Crush
Bunge North America, Inc.

United States Environmental Protection Agency, Complainant

Date

THOMAS
SHORT

Douglas Ballotti
Director
Superfund and Emergency Management Division
U.S. Environmental Protection Agency, Region 5

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**Consent Agreement and Final Order
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Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective 30 days after 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.

By: _____
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Date: _____