UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In The Matter Of:	)	**Docket No. CWA-05-2024-0016**
	)	
Evonik Corporation	)	**Proceeding to Assess a Class II Civil Penalty**
Mapleton, Illinois	)	**Under Section 311(b)(6) of the Clean Water**
	)	**Act, 33 U.S.C. § 1321(b)(6)**
Respondent.	)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 311(b)(6)(A)(ii) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6)(A)(ii), 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 Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Evonik Corporation, a corporation doing business in 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

9. Section 311(j)(1)(C) of the CWA, 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 and hazardous substances from vessels and from onshore and offshore facilities, and to contain such discharges. The authority to promulgate these regulations for non-transportation-related onshore facilities has been delegated to EPA by Executive Order 12777 (Oct. 18, 1991).

10. The oil pollution prevention regulations at 40 C.F.R. Part 112 implement the requirements of Section 311(j)(1)(C) of the CWA, and set forth procedures, methods, equipment, and other requirements to prevent the discharge of oil and hazardous substances from non-transportation-related onshore facilities into or upon, among other things, the navigable waters of the United States and adjoining shorelines. *See* 40 C.F.R § 112.1(a)(1).

11. The oil pollution prevention regulations at 40 C.F.R. Part 112 apply to, among other things, owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products, which due to their location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in 40 C.F.R. § 110.3, into or upon the navigable waters of the United States or adjoining shorelines, and have an aboveground oil storage capacity of more than 1,320 U.S. gallons or a completely buried oil storage capacity greater than 42,000 U.S. gallons. *See* 40 C.F.R. §§ 112.1(b) and (d)(2).

12. 40 C.F.R. § 112.3 requires the owner or operator of a subject facility to prepare in writing and implement a Spill Prevention Control and Countermeasure Plan ("SPCC Plan") in accordance with the requirements of 40 C.F.R. Part 112.

13. 40 C.F.R. § 112.7(c) requires the owner or operator of a subject facility to provide appropriate containment and/or diversionary structure or equipment to prevent a discharge as described in § 112.1(b).

14. 40 C.F.R. § 112.8(c)(2) requires the owner or operator of a subject facility to, among other things, provide a secondary means of containment for bulk storage container installations for the entire capacity of the largest single container and sufficient freeboard to contain precipitation, and ensure that diked areas are sufficiently impervious to contain discharged oil.

General Provisions and Enforcement of the CWA

15. 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.

16. 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.

17. 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.

18. 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.

19. 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 and in any form, including but not limited to: petroleum, fuel oil, oil refuse, oil sludge as well as vegetable oils, animal oils, fats and greases.

20. 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.

21. 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.

22. 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.

23. EPA may assess a class II civil penalty against any owner, operator, or person in charge of any onshore facility who fails or refuses to comply with any regulations issued under Section 311(j) of the CWA, 33 U.S.C. 1321(j), pursuant to Section 311(b)(6)(A)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(A)(ii).

24. For violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), 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 violation, or seeking $23,048 per day for each day during which a violation continues, up to a maximum of $288,080 for violations occurring after November 2, 2015 and penalties assessed on or after December 27, 2023.

Factual Allegations and Alleged Violations

25. Respondent is a chemical manufacturer that processes natural fats and oils into intermediates for consumer products and industrial products.

26. Respondent engages in storing, transferring, using, and distributing oil and oil products at the facility located at 8300 W. Rt. 24, Mapleton, Illinois ("Facility").

27. 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.

28. 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.

29. 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.

30. The Facility stores and uses petroleum and non-petroleum based oils. Non-petroleum based oils include canola oil, tallow, and coconut oil.

31. The Facility is an oil storage facility and is therefore an onshore "non-transportation-related" facility within the meaning of 40 C.F.R. Part 112, Appendix A.

32. The Facility has an aggregate above-ground storage capacity of greater than 2 million gallons of oil in tanks and containers.

33. The oil that Respondent stores, handles, processes, distributes and/or consumes at the Facility could reasonably be expected to discharge to the Illinois River.

34. Respondent is an owner and/or operator of a non-transportation-related onshore facility engaged in storing, processing, transferring, using or distributing oil and oil products, which, due to its location, could reasonably be expected to discharge oil in quantities that may be

harmful as described in 40 C.F.R. Part 110 into or on the navigable waters or adjoining shorelines within the meaning of Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), and 40 C.F.R. § 112.1, and is therefore subject to the oil pollution prevention regulations at 40 C.F.R. Part 112.

35. Respondent is subject to the spill prevention, control and countermeasure plan regulations and is therefore required to prepare and implement a SPCC Plan in accordance with the requirements of 40 C.F.R. Part 112.

36. From August 14 through August 17, 2017, EPA conducted an inspection at the Facility ("the facility inspection".) The Respondent provided the inspectors with a copy of a SPCC Plan with a cover date of January 2015.

37. On March 24, 2021, Respondent submitted follow-up information to EPA's inspection. Respondent included a copy of an updated SPCC Plan dated January 2015.

38. Respondent's January 2015 SPCC Plan failed to adequately and accurately discuss provisions for appropriate containment and/or diversionary structures or equipment to prevent a discharge from the Facility as described in 40 C.F.R. § 112.1(b). Specifically, the Plan did not address the containment for the railcar storage spur, as required by 40 C.F.R. § 112.7(c).

39. Respondent's January 2015 SPCC Plan did not address that all bulk storage container installations are provided with a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation, and ensure that diked areas are sufficiently impervious to contain discharged oil as required by 40 C.F.R. § 112.8(c)(2).

40. Respondent submitted SPCC Plans for the Facility to EPA dated August 2022, February 2023, and June 2023.

41. From January 2015 to February 2023, Respondent's 2015 SPCC Plan failed to adequately and accurately discuss provisions for appropriate containment and/or diversionary structures or equipment to prevent a discharge from the Facility as described in §112.1(b). Specifically, the Plan did not discuss the containment for the railcar storage spur as required by 40 C.F.R. § 112.7(c).

42. From January 2015 to the present, Respondent's failed to provide that all bulk storage container installations are provided with a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation, and ensure that diked areas are sufficiently impervious to contain discharged oil as required by 40 C.F.R. § 112.8(c)(2). In particular, Respondent failed to provide a secondary means of containment for its railcar storage spur.

43. Respondent's June 2023 SPCC Plan requires it to add a liner to the containment area for the railcar storage spur, which will be constructed of either a synthetic liner material or concrete that is sufficiently impervious by December 31, 2023. Additionally, Respondent's June 2023 SPCC Plan requires it to install a concrete barrier with a gate valve near the railcar storage spur by December 31, 2023. The storage of railcars will not be east of the road / concrete barrier. The area that would contain the discharge is large enough to contain the largest capacity of a railcar, which is 30,000 gallons, plus sufficient freeboard. Respondent's June 2023 SPCC Plan identifies this area as currently large enough to contain over 150,000 gallons; any modifications that decrease this capacity will not decrease the capacity to less than 30,000 gallons plus sufficient freeboard.

44. On October 25, 2023, EPA, Region 5, filed a Consent Agreement and Final Order (CAFO) commencing and concluding a matter under Section 311of the Clean Water Act, 33 U.S.C. § 1321 with Respondent.

45. Respondent failed to complete the railcar storage containment project discussed in Paragraph 43 by the December 31, 2023 deadline.

46. Respondent will add a liner to the containment area for the railcar storage spur, which will be constructed of concrete that is sufficiently impervious by December 31, 2024. Evonik will also install a concrete barrier with a gate valve near the railcar storage spur by December 31, 2024. The storage of railcars containing oil or hazardous substances will not be east of the road / concrete barrier. The area that would contain the discharge is large enough to contain the largest capacity of a railcar containing oil or hazardous substances, which is 30,000 gallons, plus sufficient freeboard. Respondent's June 2023 SPCC Plan identifies this area as currently large enough to contain over 150,000 gallons; any modifications that decrease this capacity will not decrease the capacity to less than 30,000 gallons plus sufficient freeboard.

47. No later than 60 days after the date by which Respondent completes the railcar storage spur containment project from Paragraph 46, Respondent will provide EPA with a Completion Report that provides (1) all information and calculations used to confirm the adequacy of the final secondary containment volume; (2) the details of the installation of the containment liner; and (3) as-built drawings of the containment installation.

Civil Penalty

48. 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 $149,849.

49. Respondent agrees to pay a civil penalty in the amount of $149,849 ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date").

50. 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. For additional instructions see: https://www.epa.gov/financial/additional-instructions-making-payments-epa.

51. When making a payment, Respondent shall:

a. Identify every payment with Respondent's name, docket number of this Agreement, and state "OSLTF – 311".

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 (E-19J)
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

Robert H. Smith
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
Smith.roberth@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.

52. 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 large corporate 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.

53. Late Payment Actions. In addition to the amount 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 not limited to, the following:

a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 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.

54. 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.

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

56. 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

57. The parties consent to service of this CAFO by email at the following email addresses: smith.roberth@epa.gov (for Complainant) and Heidi.Friedman@thompsonhine.com (for Respondent). Respondent understands that the CAFO will become publicly available upon proposal for public comment and upon filing.

58. Full payment of the penalty as described in paragraph 49, above, and full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violation alleged in this CAFO.

59. Full payment of a penalty described in paragraph 49, 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.

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

61. Respondent certifies that it is complying with Section 311 of the CWA, 33 U.S.C. § 1321, and the implementing oil pollution prevention regulations at 40 C.F.R. Part 112.

62. This CAFO constitutes a "prior violation" as that term is used in EPA's *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) 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).

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

64. 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.

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

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

67. 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.

68. 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.

69. 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.

Evonik Corporation, Respondent

Jul 22, 2024
Date

Guido Skudlarek (Jul 22, 2024 17:14 EDT)

Guido Skudlarek
President
Evonik Corporation

United States Environmental Protection Agency, Complainant

DOUGLAS BALLOTTI

Digitally signed by DOUGLAS BALLOTTI
Date: 2024.08.01 08:54:03 -05'00'

Date

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

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: _____ Date: _____

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