

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:

**NLMK Indiana, LLC
6500 S. Boundary Road
Portage, Indiana,**

Respondent.

)
) **CWA SECTION 311 CLASS II**
) **CONSENT AGREEMENT**
) **AND FINAL ORDER**
)

) Docket No.
) **CWA-05-2014-0005**
)



CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 311(b)(6)(B)(ii) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is, by lawful delegation, the Director of the Superfund Division, United States Environmental Protection Agency, Region 5.
3. Respondent is NLMK Indiana, LLC (NLMK), a limited liability corporation doing business in the State of Indiana.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

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

Jurisdiction and Waiver of Right to Hearing

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

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

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

Statutory and Regulatory Background

10. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil...from onshore...facilities, and to contain such discharges”

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

12. EPA subsequently promulgated the Spill Prevention, Control, and

Countermeasure (SPCC) regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the Act, 33 U.S.C. § 1251 *et seq.* The SPCC regulations established certain procedures, methods and requirements for each owner or operator of a non-transportation-related onshore facility, if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as the EPA has determined in 40 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States.

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

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

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

Factual Allegations and Alleged Violation

16. Respondent is a corporation organized under the laws of Indiana with a place of business located at 6500 South Boundary Road, Portage, Indiana. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.

17. Respondent is the owner and operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2 of an onshore Bulk Oil Storage facility located on the Respondent's premises (“the facility”).

18. The facility’s oil, in the event of a discharge, could reasonably be expected to flow and/or discharge to Lake Michigan, either along the topography or through a storm sewer located within the grounds of the facility.

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

20. Lake Michigan is a navigable water of the United States within the meaning of 40 C.F.R. § 112.2 and Section 502(7) of the Act, 33 U.S.C. § 1362(7).

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

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

23. The facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

24. 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”).

25. Respondent began operations at the facility on October 6, 1989.

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

27. 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated facility prepare and implement a written SPCC plan in accordance with 40 C.F.R. § 112.7 and any other applicable section of 40 C.F.R. Part 112.

28. On June 11-13, 2012, the EPA inspected the facility and evaluated NLMK's SPCC plan.

29. 40 C.F.R. § 112.7(a)(3)(i) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to prepare a SPCC Plan that contains, among other things, a description of the physical layout facility and a facility diagram. The plan must address the type of oil in each fixed container and its storage capacity. For mobile or portable containers, the plan must either provide the type of oil and storage capacity for each container or provide an estimate of the potential number of mobile or portable containers. NLMK's plan did not provide either the type of oil and storage capacity for each container or an estimate of the potential number of mobile or portable containers, in violation of 40 C.F.R § 112.7(a)(3)(i).

30. 40 C.F.R. C.F.R. § 112.7(a)(3)(ii) requires that the SPCC Plan address discharge prevention measures, including procedures for routine handling of products. NLMK's SPCC plan did not address discharge prevention measures, in violation of 40 C.F.R. § 112.7(a)(3)(ii).

31. 40 C.F.R. § 112.7(a)(3)(iii) requires the SPCC Plan to address discharge or drainage controls, equipment, and procedures for the control of a discharge. NLMK's SPCC Plan did not address the discharge or drainage controls, equipment, and procedures for the control of a discharge, in violation of 40 C.F.R § 112.7(a)(3)(iii).

32. 40 C.F.R § 112.7(a)(3)(iv) requires the SPCC Plan to address countermeasures for discharge discovery, response and cleanup available from both the facility and its contractors.

NLMK's SPCC Plan did not address countermeasures for discharge discovery, response, and cleanup, in violation of 40 C.F.R. § 112.7(a)(3)(iv).

33. 40 C.F.R. § 112.7(a)(3)(v) requires the SPCC Plan to address methods of disposal of recovered materials in accordance with applicable legal requirements. NLMK's SPCC Plan did not address methods of disposal of recovered materials in accordance with applicable legal requirements, in violation of 40 C.F.R. § 112.7(a)(3)(v).

34. 40 C.F.R. § 112.7(a)(3)(vi) requires the SPCC Plan to include a list of contacts and phone numbers for the facility response coordinator, the National Response Center, cleanup contractors with whom you have an agreement for response, and all appropriate federal, state, and local agencies who must be contacted in case of a discharge as described in 40 C.F.R. § 112.1(b). NLMK's SPCC Plan did not include this information, in violation of 40 C.F.R. § 112.7(a)(3)(vi).

35. 40 C.F.R. § 112.7(b) provides that where experience indicates a reasonable potential for equipment failure, the plan must include a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure. NLMK's plan did not include a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure.

36. 40 C.F.R. § 112.7(c)(1) requires that appropriate containment, diversionary structures, or equipment be provided to prevent a discharge as described in 40 C.F.R. § 112.1(b). NLMK's facility and plan did not provide the requisite containment and diversionary structures

to prevent a discharge as described in 40 C.F.R. § 112.1(b), in violation of 40 C.F.R. § 112.7(c)(1).

37. 40 C.F.R. § 112.7(k) requires that the owner or operators of facilities with oil-filled operational equipment provide secondary containment for this equipment pursuant to 40 C.F.R. § 112.7(c), or undertake the alternate requirements of paragraph 40 C.F.R. § 112.7(k)(2), if qualified. NLMK's Plan did not address either method of compliance, in violation of 40 C.F.R. § 112.7(k).

38. 40 C.F.R. § 112.8(c)(6) requires, among other things, that the owner or operator of an onshore facility test each aboveground container for integrity on a regular schedule and whenever material repairs are made. The integrity test must include: the appropriate qualifications for personnel performing tests and inspections; the frequency and type of testing and inspections, which take into account container size, configuration, and design; inspection of the container's supports and foundation, as well as the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. That section further requires that the SPCC Plan contain records of the above-described integrity tests. NLMK's plan did not address all of the required information related to integrity testing, nor contain records of integrity tests, in violation of 40 C.F.R. §§ 112.8(a) and 112.7(a)(1).

39. 40 C.F.R. § 112.8(c)(8)(v) requires that the owner or operator of an onshore facility regularly test liquid level sensing devices to ensure proper operation. NLMK's plan did not address whether or how it regularly tests liquid level sensing devices to ensure proper operation, in violation of 40 C.F.R. §§ 112.8(a) and 112.7(a)(1).

40. 40 C.F.R. § 112.8(c)(11) requires the owner or operator of an onshore facility to position or locate mobile or portable storage containers to prevent discharge as described in 40 C.F.R. § 112.1(b), and furnish a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation. During the inspection, EPA observed that NLMK failed to position or locate mobile or portable oil storage containers to prevent discharge as described in 40 C.F.R. § 112.1(b), and did not furnish a secondary means of containment sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation, in violation of 40 C.F.R. § 112.8(c)(11). Also, the facility's compliance with this requirement was not addressed in the plan, in violation of 40 C.F.R. §§ 112.8(a) and 112.7(a)(1).

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

Civil Penalty

42. Based on an analysis of the factors in Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), and the facts of this case, Complainant has determined that an appropriate civil penalty to settle this action is \$ 38,927.

43. Within 30 days after the effective date of this CAFO, Respondent shall pay a \$38,927 civil penalty by cashier's or certified check, or by electronic funds transfer (ETF). If paying by check, Respondent shall submit a cashier's or certified check, payable to

“Environmental Protection Agency,” and bearing the notation “OSLTF – 311” and the docket number of this case. If the Respondent sends payment by check, the payment shall be addressed to:

U.S. Environmental Protection Agency

Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

If paying by EFT Respondent shall transfer \$38,927 to:

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

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

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

45. The Respondent shall submit copies of the check (or, in the case of an EFT

transfer, copies of the EFT confirmation) to the following persons:

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

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

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

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

General Provisions

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

48. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to federal laws and regulations administered by the EPA.

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

50. EPA has provided a thirty day opportunity for public notice and comment on this proposed CAFO pursuant to Section 311(b)(6)(C)(i) of the Act, 33 U.S.C. § 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45(b).

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

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

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

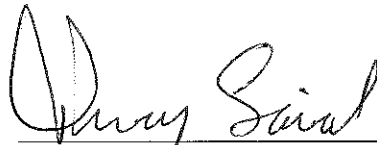
54. Complainant reserves the right, pursuant to 40 C.F.R. 22.45(c)(4)(iii), to withdraw this CAFO within 15 days of receipt of a Commenter's petition requesting, pursuant to 40 C.F.R. § 22.45(c)(4)(ii), that the Regional Administrator set aside the CAFO on the basis of material evidence not considered.

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

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

NLMK Indiana, LLC, Respondent

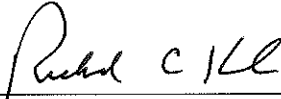
Date: 11/18/13



Terry Laird
Director of Operations
NLMK Indiana, LLC
Portage, Indiana

U.S. Environmental Protection Agency, Complainant

Date: 12-6-13



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

In the Matter of: NLMK Indiana, LLC
Docket No. CWA-05-2014-0005

FINAL ORDER

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

Date: _____

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