

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)
DEERE & COMPANY,)
MOLINE, ILLINOIS,)
RESPONDENT.)
CWA-05-2011-0001
Proceeding to Assess a
Class II Civil Penalty
Pursuant to Section
309(g) of the Clean
Water Act, 33 U.S.C.
§ 1319(g)

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OCT 19 2010

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

1. This is an administrative action commenced and concluded under section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits* (the Consolidated Rules), codified at 40 C.F.R. part 22.

2. Complainant is the Director of the Water Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is Deere & Company (Deere), the owner and operator of a manufacturing facility located at 501 River Drive, Moline, Illinois (the Deere facility).

4. Federal regulations, at 40 C.F.R. § 22.13(b), provide that 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).

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 to the terms of this 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.

Regulatory and Factual Background

9. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), states that: Whenever, on the basis of any information available the Administrator finds that any person has violated [section 307 of the CWA, 33 U.S.C. § 1317], ... the Administrator ... may, after consultation with the State in which the violation occurs, assess a ... class II civil penalty under [section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B)].

10. Section 307(d) of the CWA, 33 U.S.C. § 1317(d), states that: After the effective date of any ... pretreatment standard

promulgated under this section, it shall be unlawful for any owner or operator of any source to operate any source in violation of any such ... pretreatment standard.

11. Section 307(b) of the CWA, 33 U.S.C. § 1317(b), states: The Administrator shall ... publish proposed regulations establishing pretreatment standards for introduction of pollutants into treatment works which are publicly owned for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works.

12. Pursuant to section 307(b) of the CWA, 33 U.S.C. § 1317(b), the Administrator published the General Pretreatment Regulations for Existing and New Sources on January 28, 1981, codified at 40 C.F.R. part 403. By the terms of the regulation, the requirements of part 403 became effective three years from the date of promulgation. These standards include general prohibitions, specific prohibitions and local limits.

13. Federal regulations, at 40 C.F.R. § 403.12(e)(1), require any industrial user with processes regulated by a categorical pretreatment standard to submit a report to the Control Authority every six months indicating the nature and concentration of pollutants regulated by that categorical pretreatment standard, as well as associated flow data.

14. Pursuant to section 307(b) of the CWA, 33 U.S.C. § 1317(b), the Administrator published the "Metal Finishing Point Source Category," on July 15, 1983, codified at 40 C.F.R. part 433. By the terms of the regulation, the requirements of part 403 became effective three years from the date of promulgation.

15. The Metal Finishing Point Source Category, at 40 C.F.R. § 433.17(a), prohibits any source which began discharging subsequent to the promulgation of the category from discharging wastewater with concentrations of zinc ("Zn") in excess of 2.61 milligrams per liter ("mg/l") in a given day, or an average of 1.48 mg/l in a given month.

16. Deere is a corporation and is thus a person within the meaning of section 502(5) of the CWA, 33 U.S.C. § 1362(5).

17. Among the operations at the Deere facility, Respondent is engaged in the manufacture of products at the Deere facility. Its processes include coating, machining and polishing operations. Respondent began operating the Deere facility before July, 1986.

18. The State of Illinois has not submitted to U.S. EPA an approvable package under 40 C.F.R. § 403.10 to allow Illinois to approve pretreatment programs submitted by POTWs pursuant to 40 C.F.R. § 403.8. Consequently, according to 40 C.F.R. § 403.3(c), U.S. EPA Region 5 is the "approval authority" for

POTW pretreatment programs in the State of Illinois.

19. The City of Moline POTW has submitted an approvable pretreatment program to U.S. EPA Region 5 pursuant to 40 C.F.R. § 403.8. Consequently, the City of Moline POTW is the Control Authority pursuant to 40 C.F.R. § 403.12(a).

20. The Deere facility is a source of "indirect discharge" and an "industrial user" ("IU") or "user" as those terms are defined in 40 C.F.R. § 403.3.

21. The discharges from the Deere facility processes contain chromium, nickel, copper, zinc and lead. Chromium, nickel, copper, zinc and lead are each a pollutant, as that term is defined at 33 U.S.C. § 1362(6), and a toxic water pollutant according to 40 C.F.R. § 401.15.

22. The wastewater discharges from Respondent's processes are subject to the National Pretreatment Standards under 40 C.F.R. part 403, and the Metal Finishing Point Source Category, found at 40 C.F.R. part 433, specifically the pretreatment standards for existing sources found at 40 C.F.R. § 433.15.

COUNT I

ALLEGED VIOLATION OF DAILY MAXIMUM CATEGORICAL LIMITS
40 C.F.R. § 433.17

23. Paragraphs 1-22 are realleged as if restated here in full.

24. Complainant alleges that Respondent discharged effluent from the Deere facility processes into the City of Moline POTW during certain days in 2000, 2001, 2002, 2003, 2004 and 2005. The specific days of discharge were disclosed to EPA by Deere in a series of submissions dated April 11, 2005, October 17, 2005, and January 5, 2006 (the Self-disclosure).

25. Complainant alleges that Respondent's discharges from the Deere facility to the City of Moline POTW set forth in the Self-disclosure exceeded the applicable daily maximum concentration limits for either chromium, nickel, copper, zinc or lead contained in 40 C.F.R. § 433.15.

26. Complainant alleges that on certain days in 2000 through 2005, the concentrations of chromium, nickel, copper, zinc or lead in Respondent's discharges to the City of Moline POTW exceeded the daily maximum concentration limits for chromium, nickel, copper, zinc or lead imposed by 40 C.F.R. § 433.17, and constitute violations of a pretreatment standard, and are violations of section 307(d) of the CWA, 33 U.S.C. § 1317(d).

27. Complainant alleges that according to 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. part 19, Respondent's violations of section 307(d) of the CWA, 33 U.S.C. § 1317(d), subject Respondent to civil penalties not to exceed \$11,000 per day of violation and a maximum of \$157,500.

COUNT II

ALLEGED VIOLATION OF MONTHLY AVERAGE CATEGORICAL LIMITS
40 C.F.R. § 433.17

28. Paragraphs 1-22 are realleged as if restated here in full.

29. Complainant alleges that Respondent discharged effluent from the Deere facility into the City of Moline POTW during certain months in 2000, 2001, 2002, 2003, 2004 and 2005 which possessed the characteristics identified by Deere in the Self-disclosure.

30. Complainant alleges that on certain days in 2000 through 2005, Respondent's discharges from the Deere facility to the City of Moline POTW during the months identified in the Self-disclosure exceeded the applicable monthly average concentration limits for at least one of the following elements - chromium, nickel, copper, zinc or lead - contained in 40 C.F.R. § 433.17.

31. Complainant alleges that on certain days in 2000 through 2005, Respondent's discharges exceeded the monthly average concentration limits for chromium, nickel, copper, zinc or lead imposed by 40 C.F.R. § 433.17, and constitute violations of a pretreatment standard, and are violations of section 307(d) of the CWA, 33 U.S.C. § 1317(d).

32. Complainant alleges that according to 309(g) (2) (B) of the CWA, 33 U.S.C. § 1319(g) (2) (B), and 40 C.F.R. part 19, Respondent's violations of section 307(d) of the CWA, 33 U.S.C. § 1317(d), subject Respondent to civil penalties not to exceed \$11,000 per day of violation and a maximum of \$157,500.

COUNT III

ALLEGED VIOLATION OF SEMI-ANNUAL REPORTING REQUIREMENTS
40 C.F.R. § 403.12(e) (1)

33. Paragraphs 1-22 are realleged as if restated here in full.

34. Complainant alleges that Respondent did not submit to U.S. EPA or the City of Moline POTW (as Control Authority) reports that described completely the nature and concentration of pollutants contained in its effluent regulated by 40 C.F.R. part 433, or that contained comprehensive pH sampling, during the years 2000, 2001, 2002, 2003, and 2004, as required by 40 C.F.R. § 403.12(e) (1).

35. Complainant alleges that Respondent's failure to submit to either U.S. EPA or the City of Moline POTW reports that described fully the nature and concentration of pollutants contained in its effluent regulated by 40 C.F.R. part 433, or which failed to include adequate pH data, during the months of July through December in 2000, and each and every month during

the years 2001, 2002, 2003, and 2004, violated 40 C.F.R. § 403.12(e)(1).

36. Complainant alleges that Respondent's violations of reporting requirements in 40 C.F.R. § 403.12(e)(1) constitute violations of a pretreatment standard and are violations of section 307(d) of the CWA, 33 U.S.C. § 1317(d).

37. Complainant alleges that according to 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. part 19, Respondent's violations of section 307(d) of the CWA, 33 U.S.C. § 1317(d), subject Respondent to civil penalties not to exceed \$11,000 per day of violation and a maximum of \$157,500.

Civil Penalty

38. Pursuant to section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), Complainant determined that an appropriate civil penalty to settle this action is **\$99,000**. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and, with respect to Respondent, ability to pay, history of violations, degree of culpability, economic benefit resulting from the violations and any other factors justice may require. Complainant also considered that Deere had self-disclosed the violations and had met eight of the nine criteria set forth in "Incentives for Self-Policing: Discovery, Disclosure, Correction

and Prevention of Violations" (65 Fed. Reg. 19618, Apr. 11, 2000).

39. Within 30 days after the effective date of this CAFO, Respondent must pay the **\$99,000** civil penalty for the CWA violations by sending a check, payable to the "Treasurer, United States of America," to:

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

The check must state the docket number of this CAFO, and any assigned billing document number, discussed below.

40. Respondent should accompany the payment with a transmittal letter stating Respondent's name, complete address, the case docket number and any assigned billing document (BD) number. Respondent should write the case docket number and the BD number on the face of the check. The BD number may be found on the cover letter transmitting this CAFO. Respondent must send copies of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

Sangsook Choi (WE-15J)
Water Enforcement and Compliance Branch
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

Steven P. Kaiser (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

This civil penalty is not deductible for federal tax purposes.

41. If Respondent does not timely pay the civil penalty, EPA may refer this matter to the Attorney General who will recover such amount, plus interest, in the appropriate district court of the United States under section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(4). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

42. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

43. This CAFO constitutes a complete and full settlement of claims, and resolves the liability for federal civil penalties of the Respondent and its officers, directors and employees, arising out of the violations alleged in the CAFO. The

violations alleged in the CAFO, while pled generally, are intended by the parties to capture fully the violations contained in or arising out of the Self-disclosure.

44. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Except as provided by the express terms of this CAFO, Respondent reserves any defenses available to it in any future action brought by any party regarding the CAFO, the applicable permits for the Deere facility, the Clean Water Act, or any other statutes, regulations or rules.

45. This CAFO does not affect Respondent's responsibility to comply with the Clean Water Act, the pretreatment standards promulgated thereunder or any other applicable federal, state, and local laws.

46. Respondent certifies that the Deere facility is operating in compliance with the Clean Water Act and the pretreatment standards promulgated thereunder.

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

48. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

49. Each party agrees to bear its own costs and attorney's fees in this action.

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

51. According to section 309(g)(5) of the CWA, 33 U.S.C. 1319(g)(5), this Consent Agreement will become effective 30 days after filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. The Final Order, once effective, is a final order for the purposes of future enforcement.

Deere & Company, Respondent

29 SEPTEMBER 2010
Date

Samuel D. Butler
Samuel D. Butler
Factory Manager, Cylinder Works
Moline, Illinois

29 September 2010
Date

Michael A. Harring
Michael A. Harring
Vice President and Deputy General
Counsel, Deere & Company
Moline, Illinois

United States Environmental Protection Agency, Complainant

28 SEPTEMBER 2010
Date

Tinka G. Hyde
Tinka G. Hyde, Director
Water Division, Region 5

In the Matter of:
Deere & Company,
Moline, Illinois
Docket No. CWA-05-2011-0001

FINAL ORDER

I approve the preceding Consent Agreement and incorporate it by reference into this Final Order. **I order** Deere & Company, Moline, Illinois, to comply with the terms of the preceding Consent Agreement, effective 30 days after the filing of this Final Order with the Regional Hearing Clerk.

Date

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