

July 17, 2023

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

Received by
EPA Region 7
Hearing Clerk

BEFORE THE ADMINISTRATOR

In the Matter of)	
)	Docket No. CWA-07-2022-0051
Fuchs Lubricants Co.,)	
)	COMPLAINT AND
Respondent)	CONSENT AGREEMENT /
)	FINAL ORDER
Proceedings under Section 311(b)(6)(B)(ii))	
of the Clean Water Act, 33 U.S.C.)	
§ 1321(b)(6)(B)(ii))	

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 311(b)(6) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 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 (Consolidated Rules), 40 C.F.R. Part 22.

2. Complainant, the United States Environmental Protection Agency Region 7 (EPA), and Respondent, Fuchs Lubricants Co., 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 Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. The authority to act under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), 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 311(b)(6) to the Director of the Enforcement and Compliance Division (Complainant).

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

Statutory and Regulatory Framework

5. The objective of the CWA, 33 U.S.C. § 1251 et seq., is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

6. Sections 311(b)(3) and (4) of the CWA, 33 U.S.C. § 1321(b)(3) and (4), prohibit the discharge of oil or hazardous substances into or upon the navigable waters of the United States or

adjoining shorelines in such quantities as have been determined may be harmful to the public health or welfare of the United States.

7. 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, petroleum [or] fuel oil”

8. Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), authorizes the EPA to promulgate a regulation to define what discharges of oil may be harmful to the public health or welfare or environment of the United States.

9. 40 C.F.R. § 110.3 defines discharges of oil that the Administrator has determined may be harmful to the public health or welfare or the environment of the United States to 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.

10. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), 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 to contain such discharges.

11. To implement Section 311(j)(1)(C), the EPA promulgated regulations to prevent oil pollution at 40 C.F.R. Part 112 that set forth the requirements for the preparation and implementation of Spill Prevention, Control, and Countermeasure (SPCC) Plans. The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore facilities with an aboveground storage capacity of 1,320 gallons or greater who are engaged in gathering, storing, transferring, distributing, using, or consuming oil or oil products which, due to their locations, 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.

Allegations of Fact

12. Respondent is and was at all relevant times a corporation under the laws of, and authorized to conduct business in, the state of Kansas.

13. Respondent, a corporation, is a “person” within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

14. At all times relevant to this action, Respondent was the owner and/or operator, within the meaning of Section 311(a)(6) of the CWA and 40 C.F.R. § 112.2, of the petroleum, lubricating oil, and grease manufacturing facility located at 2140 South 88th Street, Kansas City, Kansas 66111 (the “Facility”).

15. The Facility stores and produces petroleum products including petroleum lubricating oil, mineral oil, and petroleum greases, and has an estimated aggregate storage capacity in excess of 1.5 million gallons.

16. Drainage from secondary containment at Facility loading areas flows through a storm sewer into the Kansas River. The Kansas River is a navigable water of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

17. Respondent is engaged in storing, processing, using or consuming oil or oil products located at the Facility.

18. The Facility is a “non-transportation-related” facility within the meaning of 40 C.F.R. § 112 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

19. 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.

20. The Facility is 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 and, therefore, is an SPCC-regulated facility pursuant to Section 311(j)(1)(C) of the Act, Executive Order 12777 and 40 C.F.R. § 112.1.

21. The Facility has an SPCC plan. The current version of the SPCC plan was recertified on October 31, 2020.

22. The Facility is a non-transportation-related onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines, and, therefore, is required to prepare and submit a facility response plan (FRP) pursuant to the requirements of 40 C.F.R. § 112.20.

23. The Facility has an FRP. The current version of the FRP was last revised in January 2018.

24. On June 1, 2021, a spill occurred while a tanker truck was being loaded in Loading Bay No. 4 at the Facility. A valve was left open on the tanker truck and approximately 5,198 gallons of mineral oil were released into the loading bay. Hundreds of gallons of mineral oil discharged into the Kansas River through a storm drain.

25. The June 1, 2021, spill was reported to the NRC and to the Kansas Department of Health and Environment (KDHE).

26. On June 11, 2021, representatives of the EPA inspected the Facility to determine its compliance with the SPCC regulations of 40 C.F.R. Part 112 and obtained information about the Facility.

27. On June 26, 2021, a representative of the EPA reviewed the SPCC plan.

28. The EPA’s findings about the facility and its SPCC plan were documented in an inspection report. The EPA transmitted a copy of this inspection report to Respondent on June 30, 2021.

Findings of Violation

Count 1: Unauthorized Discharge

29. Section 311(b) of the CWA, 33 U.S.C. § 1321, prohibits the discharge of oil in or onto “navigable waters of the United States”. Pursuant to 40 C.F.R. § 110.3, such discharges include discharges of oil that violate applicable water quality standards or cause a film or a 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 the adjoining shorelines.

30. On June 1, 2021, the facility discharged mineral oil through a storm drain into the Kansas River, causing a film or sheen upon the surface of the water.

31. Respondent’s discharge of oil from the Facility into the Kansas River was in a quantity that has been determined may be harmful under 40 C.F.R § 110.3, which is a violation of Sections 311(b)(3) and (b)(4) of the Act, 33 U.S.C. §§ 1321(b)(3) and (b)(4).

Count 2: Failure to Fully Prepare and Implement an FRP

32. 40 C.F.R. § 112.20(d)(1)(i) requires the owner or operator of a facility for which an FRP is required to revise and resubmit revised portions of the response plan within 60 days of each facility change that materially may affect the response to a worst-case discharge, including a change in the facility’s configuration that materially alters the information included in the response plan.

33. Respondent changed its facility loading procedures to include the loading of tanks with volumes greater than the loading area’s storage capacity but failed to update the FRP to reflect the operational changes within 60 days.

34. Respondent’s failure to correctly prepare and update the FRP violated 40 C.F.R. § 112.20.

Count 3: Failure to Fully Prepare and Implement an SPCC Plan

35. 40 C.F.R § 112.3 requires Respondent to fully prepare and implement an SPCC plan.

36. The EPA’s inspection documented Respondent’s failure to fully prepare and implement an SPCC Plan at the Facility as required by 40 C.F.R. 112.3, as follows:

a. Respondent failed to list all the most likely scenarios of a reasonable potential for equipment failure, such as discharges from loading/unloading transfers from Loading Area Nos. 2, 3, and 4, in violation of 40 C.F.R. § 112.7(b);

b. Respondent’s SPCC plan includes an incorrect secondary containment calculation for Loading Area No. 4 and does not describe how adequate secondary containment is provided for product transfers in Loading Areas No. 2, 3, and 4, in violation of 40 C.F.R. § 112.7(a)(3)(ii)–(iv);

- c. Absorbent materials described in the SPCC plan were not present during inspection, in violation of 40 C.F.R. § 112.7(c);
- d. Records of integrity testing were not available for twenty (20) of the facility's tanks, in violation of 40 C.F.R. § 112.7(e); and
- e. Integrity testing for those twenty (20) tanks was not conducted, in violation of 40 C.F.R. § 112.8(c)(6).

37. Respondent's failure to fully prepare and implement an SPCC Plan is a violation of 40 C.F.R. §§ 112.3 and 112.7.

Consent Agreement

General Provisions

38. Respondent and the EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of this CAFO.
39. 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 any portion of this CAFO.
40. Respondent and Complainant agree to bear their own costs and attorney's fees incurred as a result of this action.
41. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a civil penalty of \$55,000, as set forth in the Penalty section below.
42. 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.
43. Respondent neither admits nor denies the factual allegations asserted above by the EPA.
44. Respondent certifies by the signing of this CAFO that Respondent is in compliance with all requirements of the CWA.
45. The effect of settlement is conditional upon the accuracy of Respondent's representations to the EPA in this CAFO.

Reservation of Rights

46. This CAFO addresses all civil and administrative claims for the CWA violations alleged above. With respect to matters not addressed in this CAFO, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

47. Nothing contained in 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.

48. Notwithstanding any other provision of this CAFO, the EPA reserves the right to enforce the terms of this CAFO by initiating a judicial or administrative action pursuant to Section 311 of the CWA, 33 U.S.C. § 1321, and to seek penalties against Respondent or to seek any other remedy allowed by law.

Penalty

49. Respondent agrees to pay a civil penalty of **Fifty-Five Thousand Dollars (\$55,000)** pursuant to the authority of Section 311 of the CWA, 33 U.S.C. § 1321, within thirty (30) days of the Effective Date of this CAFO.

50. The payment of penalties must reference docket number CWA-07-2022-0051 and be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

51. Copies of the checks or verification of another payment method for the penalty payments remitted shall be emailed to:

Natasha Goss
Attorney Advisor
U.S. Environmental Protection Agency Region 7
goss.natasha@epa.gov

and

Regional Hearing Clerk
U.S. Environmental Protection Agency Region 7
r7_hearing_clerk_filings@epa.gov

52. 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.

53. Respondent understands that its failure to timely pay any portion of the civil penalty described in herein may result in the commencement of a civil action in the United States District Court for the District of Kansas to recover the full remaining balance, along with penalties and accumulated interest.

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

Signatories

55. The undersigned for each party has the authority to bind each respective party to the terms and conditions of this CAFO. The CAFO may be signed in part and counterpart by each party.

Parties Bound

56. This CAFO shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

Definitions

57. Terms used in this order that are defined in the CWA or EPA regulations promulgated under the CWA have the meanings assigned to them in the CWA or those regulations, unless otherwise provided in this Order.

Executed Agreement Filed

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

Electronic Service

59. Respondent consents to receiving the filed Consent Agreement/Final Order electronically at the following email address: *DWatson@foley.com*.

For the Respondent, Fuchs Lubricants Co.:

Signature:  2A8AA299B6E34E3...

Date: 11 May 2023

Name: Christian Bigelow

Title: Vice President - Legal

For the Complainant, U.S. Environmental Protection Agency, Region 7:

David Cozad
Director
Enforcement and Compliance Assurance Division

Natasha Goss
Attorney-Advisor
Office of Regional Counsel

FINAL ORDER

Pursuant to Section 309(g) of the 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, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date

Karina Borromeo
Regional Judicial Officer

Certificate of Service

I certify that on the date noted below I delivered a true and correct copy of this Findings of Violation and Administrative Order for Compliance on Consent by electronic mail, to:

For Complainant:

Natasha Goss
Office of Regional Counsel
U.S. Environmental Protection Agency Region 7
goss.natasha@epa.gov

Mark Aaron
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 7
aaron.mark@epa.gov

For Respondent:

Dorothy E. Watson
Counsel for Respondent
Foley & Lardner LLP
301 East Pine Street, Ste. 1200
Orlando, FL 32801
DWatson@foley.com

Date

Signature