

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**In the Matter of:**

National Oil & Gas, Inc.  
Bluffton, Indiana,

Bulk Oil Storage Facility  
in Fort Wayne, Indiana,

**Respondent.**

) **Docket No. CWA-05-2013-0013**  
)  
)

) **Proceeding to Assess a Class II Civil Penalty**  
) **under Section 311(b)(6)(B)(ii) of the Clean**  
) **Water Act, 33 U.S.C. § 1321(b)(6)(B)(ii).**  
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MAY 10 2013

**Consent Agreement and Final Order**

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 311(b)(6)(B)(ii) of the Clean Water Act (CWA), 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. §§ 22.13(b) and 22.18(b)(2) and (3).

2. Complainant is, by lawful delegation, the Director of the Superfund Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is National Oil & Gas, Inc., a corporation organized under the laws of the State of Indiana with its headquarters in Bluffton, 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). 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 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 but 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.

#### **Statutory and Regulatory Background**

9. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), states that the President of the United States 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 offshore facilities, and to contain such discharges.”

10. Sections 311(j)(5)(A)(i) and (C)(iv) of the CWA, 33 U.S.C. §§ 1321(j)(5)(A)(i) and (C)(iv), states, that the President shall issue regulations requiring the owner or operator of “an onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or upon the navigable waters of the United States [or] adjoining shorelines” to “submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil.”

11. Through Section 2(d)(1) of Executive Order 12777 (October 18, 1991), the President delegated to the EPA Administrator the authority to issue such Section 311(j)(5) regulations to govern owners and operators of such onshore facilities that are non-transportation-related.

12. The EPA Administrator subsequently promulgated regulations, codified at 40 C.F.R. Part 112, Subparts A and D (a/k/a the Facility Response Plan or FRP regulations), implementing these delegated statutory authorities.

13. Pursuant to 40 C.F.R. § 112.20(a)(2), the owner or operator of any non-transportation-related onshore facility in operation on or after August 30, 1994 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 shall prepare and submit an FRP to the EPA Regional Administrator.

14. 40 C.F.R. §§ 112.20(a)(2)(iii) and (iv) states that for a facility required to prepare and submit a response plan after August 30, 1994, as a result of a change in design, construction, operation, maintenance, or other facility characteristics, the owner or operator shall submit an FRP to the Regional Administrator before commencing operations at the portion of the facility undergoing a planned change, or within six months of an unplanned event or change, that renders the facility subject to the criteria in 40 C.F.R. § 112.20(f)(1).

15. 40 C.F.R. § 112.20(f)(1) states, in part, that a facility could, because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or on navigable waters or adjoining shorelines, if it meets the criteria of either sections 112.20(f)(1)(i) or 112.20(f)(1)(ii), as applied in accordance with the flowchart contained in

Attachment C-1 to Appendix C of Part 112.

16. 40 C.F.R. § 112.20(f)(1)(ii) is relevant if a facility has a total oil storage capacity greater than or equal to one (1) million gallons, and if any one of four subsections (i.e. sections 112.20(f)(1)(ii)(A) through (D), is true.

17. 40 C.F.R. § 112.20(f)(1)(ii)(B) is relevant if a facility is located at a distance (as calculated using the appropriate formula in Appendix C to Part 112 or a comparable formula) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments.

### **Factual Allegations**

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

19. Respondent is the “owner and/or operator” as those terms are defined in Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of a bulk oil storage facility located at 4149 Goshen Road in Fort Wayne, Indiana (the Facility).

20. When Respondent acquired the Facility in 1996, an FRP was not required because the facility tank system was utilized to store liquid fertilizer, not oil or oil products.

21. Respondent is currently engaged in storing, transferring, distributing and/or consuming oil or oil products located at the Facility.

22. Several years after acquiring the Facility, Respondent became obligated to prepare and submit an FRP as a result of planned or unplanned facility changes, due to conversion of one or more aboveground storage tanks, totaling a capacity of more than one (1) million gallons, from use for storage of liquid fertilizer to storage of oil or oil products.

23. Respondent's Facility is a "non-transportation-related onshore facility" as that term is defined in 40 C.F.R. § 112.2 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

24. Respondent's Facility is an "onshore facility" as that term is defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

25. Respondent's Facility has a total oil storage capacity of greater than or equal to one (1) million gallons since Respondent converted one or more aboveground tanks from fertilizer storage to storage of oil or oil products.

26. The St. Marys River is a navigable water within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2, and is located at a distance (as calculated by EPA using the appropriate formula in Appendix C to Part 112 or a comparable formula) such that a discharge from the Facility could cause injury to fish and wildlife and sensitive environments.

27. Respondent's Facility is a non-transportation related onshore facility that, because of its location, EPA has determined could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the United States or adjoining shorelines, within the meaning of Section 311(j)(5) of the CWA, 33 U.S.C § 1321(j)(5), and 40 C.F.R. § 112.20(f)(1) and, therefore, is an "FRP-regulated facility."

28. Respondent, as the owner and/or operator of an FRP-regulated facility, is subject to the FRP regulations.

29. As a Facility that became FRP-regulated after August 30, 1994, an FRP for the Facility should have been submitted to the EPA Regional Administrator either prior to planned

changes, or within six months after unplanned changes, that rendered the Facility subject to the criteria in 40 C.F.R. § 112.20 (f)(1).

30. In 2000, after the Facility tank system was converted from storing fertilizer to petroleum, Respondent was required to submit an FRP to the Region 5 Administrator. Respondent submitted an FRP to the EPA Region 5 Administrator in April 2012, after the time it was required.

31. Respondent's late submittal of an FRP for the Facility, is a violation of Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), and 40 C.F.R. § 112.20(a)(1).

#### **Civil Penalty**

32. Complainant has determined that an appropriate civil penalty to settle the violation alleged in this CAFO is \$40,000.

33. In determining this penalty amount, Complainant considered the statutory assessment factors set forth in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), as well as the U.S. EPA's "Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act," dated August 1998 (the CWA Penalty Policy).

34. Within 30 days after the effective date of this CAFO, Respondent agrees to pay a civil penalty of \$40,000 for the alleged CWA violation. Respondent agrees to pay the penalty by sending a cashier's or certified check, payable to the "Environmental Protection Agency," noting on the check "OSTLF-311" to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

35. The check must note Respondent's name and the docket number of this CAFO.

36. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address, and the case docket number must accompany the payment. Respondent agrees to send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604

Ellen Riley (SC-5J)  
Chemical Emergency Preparedness  
and Prevention Section  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604  
[riley.ellen@epa.gov](mailto:riley.ellen@epa.gov)

Terence Stanuch (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604  
[stanuch.terry@epa.gov](mailto:stanuch.terry@epa.gov)

37. If Respondent does not timely pay the civil penalty agreed to herein, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

38. 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, EPA will assess a six percent (6%) per year penalty on any principal amount 90 days past due.

### **General Provisions**

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

40. Complainant reserves the right, pursuant to 40 C.F.R. § 22.45(c)(4)(iii), to withdraw this Consent Agreement and proposed Final Order within 15 days of receipt of a commenter's petition, submitted pursuant to 40 C.F.R. § 22.45(c)(4)(ii), requesting that the Regional Administrator set aside the Consent Agreement and proposed Final Order on the basis that material evidence was not considered.

41. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

42. This CAFO does not affect Respondent's responsibility to comply with the CWA and any other applicable federal, state and local laws and regulations.

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

44. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31 and the August 1998 CWA Penalty Policy.

45. The terms of this CAFO shall be binding upon Respondent and its officers, directors, agents, servants, employees, and successors and assigns.

46. The civil penalty specified herein is not deductible for federal tax purposes.



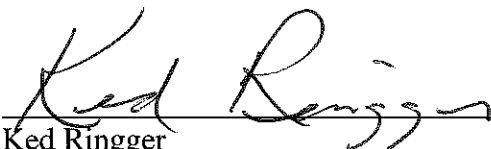
47. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

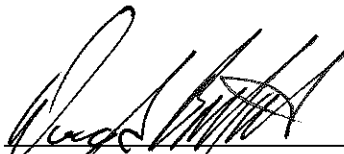
**National Oil & Gas, Inc., Bluffton, Indiana, Respondent**

4-10-13  
Date

  
Ked Ringger  
Operations Manager

**U.S. Environmental Protection Agency, Complainant**

5/8/13  
Date

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

**In the Matter of: National Oil & Gas, Inc., Bluffton, Indiana**  
**Docket No. CWA-05-2013-0013**

**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, U.S. Environmental Protection Agency, Region 5. 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