

3. The facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

4. Dutchman's Creek is a water body subject to the jurisdiction of Section 311 of the Act as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

5. The Catawba River is a water body subject to the jurisdiction of Section 311 of the Act as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

6. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

7. For purposes of Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. § 110.3 to include discharges of oil that (1) violate applicable water quality standards or (2) 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.

8. Respondent admits the jurisdictional statements contained herein.

Allegations

Complainant alleges, and Respondent neither admits nor denies, that:

9. On August 21, 2007, Respondent discharged 933 gallons of an oil mixture, including 54.8% Coco Hydrogenated Fatty Acid, as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 110.1, from its facility into or upon Dutchman's Creek and the Catawba River and/or their adjoining shorelines.

10. The release was caused when operator error caused the discharge by the over-pressurization of a chemical reactor that allowed the Coco Hydrogenated Fatty Acid to be released through the pressure relief valve on top of the reactor, into the air, and then onto the surface of Dutchman's Creek and the Catawba River.

11. Respondent's August 21, 2007, discharge of Coco Hydrogenated Fatty Acid from its facility into or upon Dutchman's Creek and the Catawba River caused a sheen upon or discoloration

of the surface of Dutchman's Creek and Catawba River and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R §110.3, in violation of Section 311(b)(3) of the Act.

Waiver of Rights

12. Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), to appeal any Final Order in this matter under Section 311(b)(6)(G)(i) of the Act, 33 U.S.C. § 1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

13. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this Consent Agreement or the Final Order.

Penalty

14. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of Nine Thousand Dollars (\$9,000).

Payment Terms

Based on the foregoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

15. No later than 30 days after the effective date of the Final Order, the Respondent shall pay the amount of \$9,000 by means of a corporate cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, Respondent shall submit a corporate cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF - 311." If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
P.O. Box 979077
St. Louis, MO 63197-9000

If Respondent sends payment by wire transfer, the payment shall be addressed to the Federal Reserve Bank of New York:

**Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045**

**(Field Tag 4200 of the Fedwire message should read
“D 68010727 Environmental Protection Agency”)**

**If Respondent sends payment by overnight mail, the payment shall be addressed to the
U. S. Bank of Saint Louis, Missouri:**

**OVERNIGHT MAIL
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101**

Contact: Natalie Pearson (314) 418 - 4087

**If Respondent sends payment by remittance express l, the payment shall be addressed to the
ACH (also known as REX or remittance express):**

**Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format**

If Respondent sends an online payment, follow the instructions on the website listed below:

**WWW.PAY.GOV
Enter sfo 1.1 in the search field**

Open form and complete required fields.

16. If paying by check, the Respondent shall note on the penalty payment check the title and docket number of this case. The Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the following people:

Patricia Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 4
SNAFC
61 Forsyth St., S.W.
Atlanta, GA 30303

and

Doug McCurry, Chief
North Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. Environmental Protection Agency
Region 4
SNAFC
61 Forsyth St., S.W.
Atlanta, GA 30303

17. Respondent's failure to pay the penalty assessed by the Final Order in full by its due date 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

18. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

19. The Final Order 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 there under, 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.

Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein.

20. The undersigned representative of Respondent hereby certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and attached Final Order and to execute and legally bind Respondent to this Consent Agreement and attached Final Order.

21. The following attorney represents EPA in this matter and is authorized to receive service for EPA in the proceeding:

Cathy Winokur
Associate Regional Counsel
OEA – 13th Floor
United States Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center,
61 Forsyth Street, SW
Atlanta, Georgia 30303
(404) 562-9596
Winokur.Cathy@epa.gov

The following attorney represents Respondent in this matter and is authorized to receive service for Respondent in the proceeding:

Erin Russell
Assistant General Counsel
Clariant Corporation
4000 Monroe Road
Charlotte NC 28205
704-331-7059
erin.russell@clariant.com

Effective Date

22. This Consent Agreement and attached Final Order is effective upon the filing of the Final Order with the Regional Hearing Clerk.

Clariant Corporation



Date: 8/25/08 Signature: H H Fowler

Hugh Fowler
Senior Vice President
Functional Chemicals Division

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/3/08 Signature: Caroline Y. F. Robinson for

Caroline Y. F. Robinson, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

FINAL ORDER

Pursuant to Section 311(b)(6) of the Clean Water Act, 33 U.S.C. § 1321(b)(6), and the delegated authority of the undersigned, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits,” codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties and Allegations by the Complainant are adopted as Findings in this Final Order.

The Respondent is ordered to comply with the terms of the Consent Agreement, Docket No. CWA-04-2008-5153(b).

Date: 9/5/08

Susan S. Schub
Susan Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the Foregoing Consent Agreement and Final Order, in the Matter of Clariant Corporation, Docket No. CWA-04-2008-5153(b), on the parties listed below in the manner indicated:

Cathy Winokur, Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency – Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

(Via EPA Internal Mail)

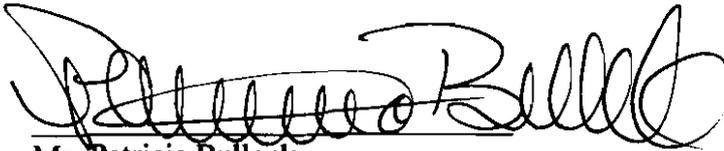
Erin Russell, Assistant General Counsel
Clariant Corporation
4000 Monroe Road
Charlotte, NC 28205

(Via Certified Mail,
Return Receipt Requested)

Doug McCurry, Chief
North Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
U.S. Environmental Protection Agency – Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

(Via EPA Internal Mail)

Dated this 5 day of September 2008.



Ms. Patricia Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency – Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960