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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
Darling Ingredients, Inc. (d/b/a Dar Pro)	)	**CONSENT AGREEMENT AND FINAL ORDER**
Sioux City, Iowa	)	
Respondent.	)	Docket No. CWA-07-2016-0004

The U.S. Environmental Protection Agency ("EPA"), Region 7 ("Complainant") and Darling Ingredients, Inc. ("Darling Ingredients" or "Respondent") 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 Rules 22.13(b) and 22.18(b)(2) of 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 ("Consolidated Rules"), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). Public notice and the opportunity for comment of this Consent Agreement and Final Order ("CAFO") is required pursuant to Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), and 40 C.F.R. § 22.45.

A. ALLEGATIONS

Jurisdiction

1. This is a "Class II" administrative action for the assessment of civil penalties initiated pursuant to Section 311 of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA"), 33 U.S.C. § 1321, and in accordance with the Consolidated Rules, 40 C.F.R. Part 22. This CAFO serves as notice that EPA has reached settlement for Respondent's alleged violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), and regulations promulgated thereunder at 40 C.F.R. Part 112 for the requirements for Spill Prevention Control and Countermeasures Plans ("SPCC") and Facility Response Plans ("FRP") at a facility located at or near Sioux City, Iowa ("Facility").

Parties

2. The authority to take action under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6) 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 it to the Director of the Air and Waste Management Division of EPA, Region 7.

3. Respondent Darling Ingredients, Inc. is a corporation registered and authorized to conduct business in the State of Iowa and does business under the name of Dar Pro.

Statutory and Regulatory Framework

Section 311 of the CWA

4. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), provides for the regulation of onshore facilities to prevent or contain discharges of oil. 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 . . . ."

5. EPA promulgated the SPCC regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the CWA, 33 U.S.C. § 1251 *et seq.*, which established certain procedures, methods and requirements upon each owner and operator of a non-transportation-related onshore facility.

6. Pursuant to 40 C.F.R. § 112.1, the SPCC program is applicable if a facility stores greater than 1,320 gallons of oil and, due to its location, the facility 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 EPA has determined in 40 C.F.R. § 110.3 may be harmful ("harmful quantity") to the public health or welfare or the environment of the United States.

7. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), EPA has determined that discharges of harmful quantities include oil discharges that cause either (1) a violation of applicable water quality standards, or (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines, or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

8. 40 C.F.R. § 112.2 sets forth definitions applicable to the FRP program and states "*Oil* means oil of any kind or in any form, including, but not limited to: fats, oils, or greases of animal, fish, or marine mammal origin; vegetable oils, including oils from seeds, nuts, fruits, or kernels; and, other oils and greases, including petroleum, fuel oil, sludge, synthetic oils, mineral oils, oil refuse, or oil mixed with wastes other than dredged spoil."

9. 40 C.F.R. § 112.7(a)(2) requires the owner and/or operator of a SPCC regulated facility to "comply with all applicable requirements" of 40 C.F.R. Part 112. The SPCC requirements for facilities that store "animal, fats, and vegetable oils" (AFVO) are set forth at 40 C.F.R. § 112.12.

10. Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), provides 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 [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." Under the authority of Section 311(j)(5) of the CWA, EPA promulgated regulations for facilities required to have such response plans that are found at Subparts A and D of 40 C.F.R. Part 112 ("the Facility Response Plan" or "FRP regulations").

11. 40 C.F.R § 112.20(f)(1) establishes criteria for determining whether a facility is subject to the FRP requirements by evaluating whether the discharge of oil from a facility could reasonably be expected to cause substantial harm." The "substantial harm" criteria set forth at 40 C.F.R 112.20(f)(1) include, but are not limited to, facilities with oil storage capacity of greater than or equal to one million gallons, and where a discharge from the facility could cause injury to fish and wildlife and sensitive environments (as defined at 40 C.F.R. 112.2, hereafter "sensitive environments").

12. Pursuant to 40 C.F.R. § 112.20(a), facilities that are subject to the FRP program are required to prepare a FRP, as specified in 40 C.F.R. § 112.20(h), and submit the FRP to EPA (This requirement has been effective since August 30, 1994).

13. 40 C.F.R. § 112.21(a) states that the owner or operator of a FRP regulated facility is required to develop, document and implement a facility inspection program, a response training program and a drill/exercise program that satisfies the requirements of 40 C.F.R. 112.21(h)(8).

14. Section 311(j)(5)(F)(ii) of the CWA, 33 U.S.C. § 1321(j)(5)(F)(ii) establishes the prohibition that an owner and/or operator of a facility required to submit a FRP to EPA "may not handle, store, or transport oil unless…the vessel or facility is operating in compliance with the plan."

Factual Allegations

15. Respondent Dar Pro, is a person within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.

16. At all times relevant to the allegations in this Complaint, Respondent was the "owner or operator," within the meaning of Section 311(a)(6) of the CWA, 33 U.S. § 1321(a)(6) and 40 C.F.R. § 112.2, of the rendering facility addressed at 1900 Murray Street ("Facility" or "Sioux City Facility"), which stored greater than 1,320 gallons of animal fats and oils.

17. Respondent's Sioux City Facility is an "onshore facility" within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

18. Respondent's Sioux City Facility is a "non-transportation-related facility" as defined by Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R § 112.2.

19. The Sioux City Facility is directly adjacent to the Missouri River. The Missouri River is a navigable water of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 112.2, and a discharge from the facility would reasonably be expected to impact the Missouri River.

20. On May 16, 2013, the EPA conducted a SPCC inspection of the Facility. During EPA's May 2013 inspection, EPA reviewed the Facility's SPCC plan which stated that the Facility had less than one million gallons of oil storage capacity. During EPA's inspection, EPA documented Respondent's non-compliance with SPCC requirements at the Facility. On or about September 26, 2013, a copy of EPA's inspection report was transmitted to Respondent which informed Respondent of the EPA's observed violations of the SPCC program, and the fact that storage capacity of the Facility had been determined to be greater than one million gallons (calculated by EPA as 1,189,383 gallons). A worst case discharge from the Facility would reasonably be expected to impact "wetlands," which are an identified sensitive environment, as defined by 40 C.F.R. § 112.2. All of the conditions observed during EPA's 2013 inspection which EPA asserts constitute non-compliance with the requirements of 40 C.F.R. Part 112 are set forth in paragraph A. 25 through A.33.

21. Due to the fact that the Facility had storage capacity greater than one million gallons, EPA's inspection report also documented that the Facility was subject to the FRP program regulations set forth at 40 C.F.R. §§ 112.20 and 112.21.

22. On or about October 15, 2013, Respondent submitted a response to EPA's inspection report that contested EPA's description of SPCC and FRP violations at the Facility. In March 2015, Region 7 initiated negotiations with Respondent regarding the Facility's compliance with the SPCC and FRP programs which has resulted in this Consent Agreement and Final Order. During these negotiations, Respondent provided documentation of 2015 modifications and the rerating of the oil storage capacity at the Facility to below one million gallons.

23. Prior to the date of the 2015 rerating of the oil storage capacity of the Sioux City

Facility, the Facility operated with an oil storage capacity of greater than one million gallons of "oil," as defined by 40 C.F.R. § 112.2.

24. Prior to the date of the 2015 rerating of the oil storage capacity, the Facility could reasonably be expected to cause "substantial harm" to the environment if a discharge of oil occurred into or on navigable waters or adjoining shorelines, as defined by 40 C.F.R. § 112.20(f)(1), and therefore, the Facility, had been subject to Section 311(j)(5) of the CWA and the FRP program regulations set forth at 40 C.F.R. §§ 112.20 and 112.21.

Alleged Violations

Count 1:
Violations of SPCC Requirements at Sioux City Facility

25. The allegations stated in paragraphs A.15 though A.24, above, are hereby incorporated by reference.

26. At the time of the May 2013 inspection, and thereafter, Respondent failed to fully prepare and implement an SPCC Plan, as required by 40 C.F.R. § 112.3.

27. At the time of the May 2013 inspection, and thereafter, Respondent failed to comply with the requirements of 40 C.F.R. Part 112, as required by 40 C.F.R. § 112.7(a)(2), as follows:

a. The Facility SPCC Plan failed to contain documentation of 5 year review of the 2009 plan, and thereafter, in violation of 40 C.F.R. § 112.5(b);
b. Failure to properly calculate storage capacity based on shell capacity of bulk storage containers, in violation of 40 C.F.R. § 112.3 and 112.7;
c. The Facility SPCC Plan failed to contain required technical amendments to the Facility's 2009 SPCC Plan, as necessitated by the removal of 2 tanks, in violation of 40 C.F.R. § 112.5(a);
d. The Facility SPCC Plan failed to update facility diagram reflecting the removal of 2 tanks, in violation of 40 C.F.R. § 112.7(a)(3);
e. The Facility SPCC Plan failed to document the presence of oil filled equipment (3,000-gallon settling tank, four 9,321-gallon tanks (about 37,000 gallons), and a 4,488-gallon oil water skimmer, in violation of 40 C.F.R. § 112.7(a)(3)); and
f. The Facility SPCC Plan failed to describe an integrity testing standard that comported with an objective industry standard, in violation of 40 C.F.R. § 112.12(c)(6);

28. Respondent's failure to prepare and implement an SPCC plan for the facility in accordance with the requirements of 40 C.F.R. Part 112, as described in Paragraph 27, above, violated 40 C.F.R. § 112.3.

29. Respondent's violations of the cited requirements of 40 C.F.R. Part 112, as described in Paragraph 27, above, are also violations of 40 C.F.R. § 112.7(a)(2).

Count 2:
Violations of FRP Requirements at Sioux City Facility

30. The allegations stated in paragraphs A.15 though A.24, above, are hereby incorporated by reference.

31. Prior to Respondent's 2015 rerating of the oil storage capacity of the Sioux City Facility, Respondent's failure to prepare and submit a FRP to EPA, was a violation of 40 C.F.R. § 112.20(a) and Section 311(j)(5).

32. Prior to Respondent's rerating of the oil storage capacity at the Sioux City Facility, Respondent failed to develop, document and/or implement an inspection program, a facility response training program and/or a drill/exercise program that satisfied the requirements of 40 C.F.R. § 112.20(h)(8), and therefore, was in violation of 40 C.F.R. § 112.21(a).

33. Prior to Respondent's 2015 rerating of the oil storage capacity of the Sioux City Facility below one million gallons, Respondent's storage of oil at the Facility was in violation of the prohibition set forth at Section 311(j)(5)(F)(ii) of the CWA, 33 U.S.C. § 1321(j)(5)(F)(ii).

B. CONSENT AGREEMENT

1. Respondent Darling Ingredients, Inc., and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

2. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and Final Order.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

4. Respondent waives its right to a judicial or administrative appeal of this Consent Agreement and Final Order.

5. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and agree to each bear their own costs and attorney's fees incurred as a result of this action.

6. This Consent Agreement and Final Order addresses all civil and administrative claims for the CWA violations identified in Counts 1 and 2, as alleged above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

7. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

8. The undersigned representative of the Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind the Respondent to the terms contained herein.

9. Respondent certifies, that to the best of its knowledge, as of the date that it executes this Consent Agreement and Final Order, that it is in compliance with the SPCC and FRP requirements of 40 C.F.R. Part 112, and Section 311(j) of the CWA, 33 U.S.C. § 1321(j), for Respondent's Sioux City facility. Respondent further agrees that a licensed Professional Engineer will complete an evaluation of the adequacy of the Sioux City facility's SPCC plan within thirty (30) days of the effective date of this Consent Agreement and Final Order, and if additional changes are found appropriate by Respondent's Professional Engineer, it will further amend the SPCC plan to address such findings within six (6) months of such finding, and will implement the amended plan as soon as possible, but not later than six months following preparation of the amendment in accordance with the provisions of 40 C.F.R. §112.5.

10. The effect of settlement described in Paragraph B.6, above, is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph B.9, above, of this Consent Agreement and Final Order.

11. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a CWA penalty of Ninety-Nine Thousand Dollars ($99,000), plus any applicable interest, as set forth in Paragraphs B.13 to B.15, below.

12. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

Payment Procedures

13. Within thirty (30) days of the Effective date of the Final Order, Respondent shall pay a total civil penalty of Ninety-Nine Thousand Dollars ($99,000), plus any applicable interest, according to the terms below. This payment shall reference the Docket No. CWA- 07-2016-0004 and shall be made by cashier or certified check made payable to the "Environmental Protection Agency – OSLTF-311" and remitted to:

U.S. EPA
P.O. Box 979077
St. Louis, Missouri 63197-9000.

14. The Respondent shall reference the Docket Number CWA-07-2016-0004 and **In the Matter of Darling Ingredients, Inc. (d/b/a Dar Pro)** on the check. Copies of the check shall be mailed to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and

Howard Bunch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

15. No portion of the civil penalty or any interest paid by Respondent pursuant to the Requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Parties Bound

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

General Provisions

17. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of this Consent Agreement and Final Order 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.

18. Complainant reserves the right to take enforcement action against Respondent for any past or future violations of the CWA and its implementing regulations, not resolved by this Consent Agreement and Final Order, and to enforce the terms and conditions of this Consent

Agreement and Final Order.

19. The Final Order shall be entered and become effective upon execution by the Regional Judicial Officer after the conclusion of the period of public notice and comment required pursuant to Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), and 40 C.F.R. § 22.45. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

20. Respondent and Complainant shall each bear their respective costs and attorney's fees.

21. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

22. The parties agree that this Consent Agreement and Final Order may be signed in part and counterpart.

For the Respondent Darling Ingredients, Inc.

Signature

1/19/16
Date

WILLIAM R. MCMURTRY
Printed Name

VP OF ENVR. AFFAIRS
Title

For the Complainant:

The U.S. Environmental Protection Agency

John Smith
Deputy Director
Air and Waste Management Division

4/5/2016
Date

Howard C. Bunch
Sr. Assistant Regional Counsel

4/5/2016
Date

C. FINAL ORDER

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), 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.

4-6-2016
Date

IN THE MATTER Of Darling Ingredients, Inc. (d/b/a Dar Pro), Respondent
Docket No. CWA-07-2016-0004

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy emailed to Attorney for Complainant:

bunch.howard@epa.gov

Copy by First Class Mail to Respondent:

William R. McMurtry, Vice President of Environmental Affairs
Darling International, Inc.
251 0 Connor Ridge Blvd Ste 300
Irving TX 75038-6510

Dated: 4/6/16

Kathy Robinson
Hearing Clerk, Region 7