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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)

Ag Processing Inc a cooperative)

Mason City, Iowa)

Respondent.)

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. CWA-07-2011-0102

The United States Environmental Protection Agency (EPA), Region VII (Complainant) and Ag Processing Inc a cooperative ("AGP" 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).

A. FINDINGS

Jurisdiction

1. This is a "Class II" administrative action for the assessment of civil penalties instituted 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 of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.

2. This Consent Agreement and Final Order serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Sections 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 Facility Response Plans ("FRP").

Parties

3. The authority to take action under Sections 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6) is vested in the Administrator of EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region VII, who in turn has delegated it to the Director of the Air and Waste Management Division of EPA, Region VII (Complainant).

4. Respondent AGP is a corporation registered and authorized to conduct business in the State of Iowa.

Statutory and Regulatory Framework

Section 311 of the CWA

5. 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) of the CWA, 33 U.S.C. § 1321(j), 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 offshore facilities, and to contain such discharges.”

6. The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, 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.

7. Sections 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.”

8. Under the authority of Section 311(j)(5) of the CWA, Subparts A and D of 40 C.F.R. Part 112 (“the Facility Response Plan” or “FRP regulations”) FRP-regulated facilities are required to prepare a Facility Response Plan as specified in 40 C.F.R. § 112.20(h), and to develop and implement a facility response training program and a drill/exercise program that satisfies the requirements of the regulations (40 C.F.R. § 112.21(a)).

Factual Background

9. Respondent 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 CFR §112.2.

10. Between 2006 and the present, Respondent was at all relevant times the “owner or operator,” within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6) and 40 C.F.R. § 112.2, of a soybean oil manufacturing plant addressed at 1605 19th Street SW, Mason City, Iowa (“Mason City facility,” or “Facility”).

11. The AGP Mason City facility is located within 300 feet of a perennial stream named Cheslea Creek that flows through two small lakes and then into Willow Creek and the Winnebago River.

12. The Facility has a documented storage capacity of approximately 5,600,000 gallons of soy oil and/or fuel oil. Oil products released from a spill at the facility could reach Cheslea Creek, the intervening waters and the Winnebago River. The Facility has an SPCC Plan and secondary containment.

13. Cheslea Creek, the intervening waters and the Winnebago River are each navigable waters of the United States within the meaning of 40 C.F.R. § 112.2.

14. Respondent’s 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.

15. Respondent’s 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.

16. Soy oil and fuel oil are forms of oil as defined by Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2.

17. As the owner and operator of a non-transportation-related 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, Respondent is subject to Section 311(j)(5) of the Act and the FRP regulations at 40 C.F.R. Part 112.

18. On or about January 6, 2009, EPA conducted an inspection of the Mason City facility. EPA’s representatives inspected, and/or obtained information about the Facility and determined the Facility was subject to the FRP regulations at 40 C.F.R. Part 112, due to a documented storage capacity of over 1 million gallons and the potential to harm wildlife and sensitive environments.

19. To date, AGP has not submitted a FRP for the Mason City facility, as specified in 40 C.F.R. § 112.20(h); and has also not developed or implemented a facility response training program or a drill/exercise program that satisfies the requirements of the regulations (40 C.F.R. § 112.21(a)),

as required by 40 C.F.R. Part 112.

Alleged Violations

Count 1: Violations of FRP Requirements

20. The facts stated in paragraphs A.11 through A.19, above, are hereby incorporated by reference.

21. Respondent's failure to comply with the requirements to submit a FRP to EPA, as cited in Paragraph 20, is a violation of 40 C.F.R. 112.20 and 112.21 and Section 311(j)(5).

22. Respondent's failure to develop and/or implement a facility response training program or a drill/exercise program that satisfies the requirements of the regulations (40 C.F.R. § 112.21(a)), as cited in Paragraph 20, is a violation of 40 C.F.R. 112.20 and 112.21 and Section 311(j)(5).

Relief

23. Based on the foregoing Findings, and pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1311(b)(6), EPA, Region VII hereby proposes to issue a Final Order assessing an administrative penalty against the Respondent, for the violations cited above, in the amount of \$96,588.

B. CONSENT AGREEMENT

1. Respondent 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 in 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 hearing on any issue of fact or law set forth above, and its right to appeal 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 resolves all civil and administrative claims for the CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law not otherwise addressed in this Consent Agreement and Final Order.

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 as of the date that it executes this Consent Agreement and Final Order, it has taken steps to address the violations cited in Count 1 by entering into an administrative order on consent (Docket No. CWA-07-2011-0101) with EPA that establishes a compliance schedule for the submittal of an FRP for its Mason City facility, and for the completion of a Substantial Harm Certification for its Emmetsburg, Iowa facility and that, based on representation and belief, AGP is otherwise in compliance with the requirements of 40 C.F.R. Part 112 and Section 311(j) of the CWA, 33 U.S.C. § 1321, for Respondent's Mason City facility.

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 \$96,588 as set forth in Paragraphs C.1 to C.3 of the Final Order.

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.

C. FINAL ORDER

Payment Procedures

Pursuant to the authority of Section 311 of the CWA, 33 U.S.C. § 1321 and according to terms of this Consent Agreement and Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a total mitigated civil penalty of Ninety Six Thousand, Five Hundred, Eighty-Eight Dollars (\$96,588), within 30 days of the effective date of this Consent Agreement and Final Order, as defined in paragraph 7 of the General Provisions. This payment shall reference the Docket No. CWA- 07-2011-0102 and shall be made by cashier or certified check made payable to the "United States Treasury" and remitted to:

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

2. Copies of the check shall be mailed to:

Howard C. Bunch
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency - Region VII
901 North 5th Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region VII
901 North 5th Street
Kansas City, Kansas 66101.

3. No portion of the civil penalty 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

4. This Consent Agreement and Final Order shall apply to and be binding upon Respondents 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 Consent Agreement and

Final Order.

General Provisions

5. 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 any other remedy allowed by law for violation of the terms of this Consent Agreement and Final Order.

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

7. This Order shall be entered and become effective 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 and final approval noted by the signature of the Regional Judicial Officer. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

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

9. 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.

For the Respondent AG Processing Inc a cooperative:



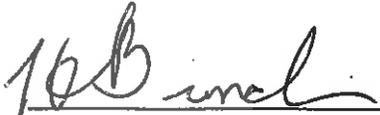
Printed Name: MARK CRAYBILL
Title: SR VP. OF OPERATIONS

10/20/11
Date

IN THE MATTER OF

Ag Processing Inc a cooperative, Mason City, Iowa
CONSENT AGREEMENT AND FINAL ORDER
Docket No. CWA-07-2011-0102

For the Complainant:
The United States Environmental Protection Agency



Howard C. Bunch
Sr. Assistant Regional Counsel

12/28/11

Date



for Becky Weber, Director
Air, Waste Management Division

11/2/11

Date

IN THE MATTER OF
Ag Processing Inc a cooperative, Mason City, Iowa
CONSENT AGREEMENT AND FINAL ORDER
Docket No. CWA-07-2011-0102

IT IS SO ORDERED. This Final Order shall become effective immediately.



Robert Patrick
Regional Judicial Officer



Date

IN THE MATTER OF Ag Processing Inc a cooperative, Respondent
Docket No. CWA-07-2011-0102

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 hand delivered to
Attorney for Complainant:

Howard Bunch
Sr. Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Chris McDonald, Esq.
Shook, Hardy & Bacon L.L.P.
2555 Grand Blvd.
Kansas City, Missouri 64108-2613

Dated: 1/3/12


Kathy Robinson
Hearing Clerk, Region 7