

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
2012 JUN -4 AM 10:44

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	Docket No. CWA-07-2012-0023
)	
CARBOLYTIC MATERIALS)	CONSENT AGREEMENT
COMPANY, LLC)	AND FINAL ORDER
)	
Respondent)	Proceeding to Assess Class II Civil Penalty
)	Under Clean Water Act Section 311 for
)	the Discharge of Oil into Navigable Waters

CONSENT AGREEMENT AND FINAL ORDER

1. This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(ii) of the Clean Water Act ("Act"), 33 U.S.C. §1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 CFR §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, who has in turn delegated them to the Director of Air and Waste Management Division, EPA, Region 7.
2. Respondent is a corporation and a business organized under the laws of Missouri. The Respondent is both a 'person' within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. §1321(a)(7) and 40 CFR §112.2.
3. Respondent is the owner/operator of an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. §1321(a)(10), and 40 CFR §112.2, which is located at or near 600 Wilson Industrial Road, Maryville, MO 64468 ("facility").
4. The One Hundred and Two River is a navigable water of the United States as defined in Section 502(7) of the Act, 33 U.S.C. §1362(7), and 40 CFR §110.1.

Allegations

5. Section 311(b)(3) of the Act 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.
6. 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 CFR §110.3 to include discharges of oil that 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.

7. On or about February 18, 2011, Respondent discharged 111 barrels of oil as defined in Section 311(a)(1) of the Act, 33 U.S.C. §1321(a)(1), and 40 CFR §110.1, from its facility into or upon the One Hundred and Two River or adjoining shorelines.

8. The One Hundred and Two River is a navigable water of the United States as defined in Section 502(7) of the Act, 33 U.S.C. §1362(7), and 40 CFR §110.1.

9. Respondent's February 18, 2011, discharge of oil from its facility caused a sheen upon or discoloration of the surface of the One Hundred and Two River, and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R §110.3, which implements Sections 311(b)(3) and (b)(4) of the Act.

10. Respondent's February 18, 2011, discharge of oil from its facility into or upon the One Hundred and Two River or adjoining shorelines, in a quantity that has been determined may be harmful under 40 CFR §110.3, violated Section 311(b)(3) of the Act.

CONSENT AGREEMENT

11. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

12. Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

13. Respondent neither admits nor denies the factual allegations and legal conclusions set forth above.

14. 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 the Final Order portion of this CAFO.

15. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

16. This CAFO addresses all civil claims for the alleged CWA violations identified above. Complainant reserves the right to take enforcement action with respect to any other violations of the CWA or other applicable law.

17. Respondent certifies by the signing of this CAFO that to the best of its knowledge, Respondent's facility is in compliance with all requirements of the Clean Water Act and all regulations promulgated thereunder.

18. The effect of settlement described in paragraph 16 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 17, above, of this CAFO.
19. 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.
20. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.
21. Respondent consents to the payment of a civil penalty of \$29,300 as set forth in paragraph 1 of the Final Order.
22. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due shall cause the entire civil penalty assessed to be due and owing, and 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, together with any late charges and handling charges which may be authorized by statute.

FINAL ORDER

Pursuant to the authority of Section 311 of the CWA, 33 U.S.C. § 1321, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Twenty-Nine Thousand Three Hundred Dollars (\$29,300), payable in four quarterly installment payments of Seven Thousand Three Hundred and Fifty-Eight Dollars and Seventy Cents (\$7,358.70), with a total of One Hundred and Eighty-Four Dollars and Eighty Cents interest assessed (\$134.80), for a total civil penalty of Twenty-Nine Thousand Four Hundred and Thirty Four Dollars and Eighty Cents (\$29,434.80) payable within 365 days of entry of this Final Order. The quarterly installment payments shall be due 30, 120, 210 and 365 days, respectively, after entry of this Final Order. Payments shall be by cashier's or certified check made payable to the "Environmental Protection Agency - OSLTF - 311" and remitted to:
United State Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000.
2. The payments shall identify Respondent by name and docket number (CWA-07-2012-0023). Copies of the checks shall be mailed to:

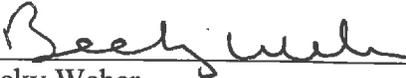
Regional Hearing Clerk
United States Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101

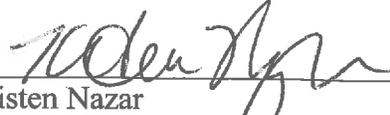
and to:

Kristen Nazar
Assistant Regional Counsel
United States Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

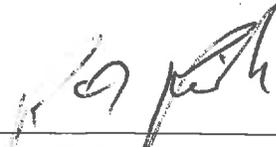
3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date 5/22/12 By 
Becky Weber
Director
Air and Waste Management Division

Date 5/17/12 By 
Kristen Nazar
Assistant Regional Counsel
Office of Regional Counsel

RESPONDENT:
CARBOLYTIC MATERIALS COMPANY, LLC

By 
Title CEO
Date 3/27/12

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

Date June 4, 2012 By 
ROBERT L. PATRICK
Regional Judicial Officer

Date _____

IN THE MATTER OF Carbolytic Materials Company, LLC, Respondent
Docket No. CWA-07-2012-0023

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:

Kristen Nazar
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:

Raymond F. Riek
Carbolytic Materials Company
926 Ridgepointe Place Circle
Lake Saint Louis, Missouri 63367

Dated: 10/4/12


Kathy Robinson
Hearing Clerk, Region 7