

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In The Matter Of:)	Docket No. CWA-05-2024-0001
)	
Evonik Corporation)	Proceeding to Assess a Class II Civil Penalty
Mapleton, Illinois)	Under Section 311(b)(6) of the Clean Water
)	Act, 33 U.S.C. § 1321(b)(6)
<u>Respondent.</u>)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 311(b)(6)(A)(ii) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6)(A)(ii), and Sections 22.1(a)(6), 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. Part 22.

2. Complainant is the Director of the Superfund Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Evonik Corporation, a corporation doing business in Illinois.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an 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 terms of this CAFO, including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Judicial Review and Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and alleged violations in this CAFO.

8. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including its right to request a hearing under 40 C.F.R. § 22.15(c) and Section 311(b)(6)(B)(ii), 33 U.S.C. § 1321(b)(6)(B)(ii); its right to seek federal judicial review under Section 311(b)(6)(G) of the CWA, 33 U.S.C. § 1321(b)(6)(G), and Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; 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), provides 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 and offshore facilities, and to contain such discharges. The authority to promulgate these regulations for non-transportation-related onshore facilities has been delegated to EPA by Executive Order 12777 (Oct. 18, 1991).

10. The oil pollution prevention regulations at 40 C.F.R. Part 112 implement the requirements of Section 311(j)(1)(C) of the CWA, and set forth procedures, methods, equipment, and other requirements to prevent the discharge of oil and hazardous substances from non-transportation-related onshore facilities into or upon, among other things, the navigable waters of the United States and adjoining shorelines. *See* 40 C.F.R § 112.1(a)(1).

11. The oil pollution prevention regulations at 40 C.F.R. Part 112 apply to, among other things, owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products, which due to their location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in 40 C.F.R. § 110.3, into or upon the navigable waters of the United States or adjoining shorelines, and have an aboveground oil storage capacity of more than 1,320 U.S. gallons or a completely buried oil storage capacity greater than 42,000 U.S. gallons. *See* 40 C.F.R. §§ 112.1(b) and (d)(2).

12. 40 C.F.R. § 112.3 requires the owner or operator of a subject facility to prepare in writing and implement a Spill Prevention Control and Countermeasure Plan (“SPCC Plan”) in accordance with the requirements of 40 C.F.R. Part 112.

13. 40 C.F.R. § 112.5(b) requires the owner or operator of a subject facility to review and evaluate the SPCC Plan at least once every five years from the date of the last review.

14. 40 C.F.R. § 112.7(a)(3) requires the owner or operator of a subject facility to describe in the SPCC Plan the physical layout of the facility and include a facility diagram, which must include oil storage containers and the storage area where mobile or portable containers are located. The facility diagram must also include all transfer stations and connecting pipes.

15. 40 C.F.R. § 112.7(a)(3)(i) requires the owner or operator of a subject facility to address in the SPCC Plan the type of oil in each fixed container and its storage capacity.

16. 40 C.F.R. § 112.7(a)(3)(ii) requires the owner or operator of a subject facility to address in the SPCC Plan the discharge prevention measures including procedures for routine handling of product (loading, unloading, and facility transfers, etc.).

17. 40 C.F.R. § 112.7(a)(3)(iii) requires the owner or operator of a subject facility to address in the SPCC Plan the discharge or drainage controls such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge.

18. 40 C.F.R. § 112.7(b) requires the owner or operator of a subject facility to include in the SPCC Plan a prediction of the direction, rate of flow, and total quantity of oil that could be discharged for each type of major equipment failure where experience indicates a reasonable potential for equipment failure.

19. 40 C.F.R. § 112.7(c) requires the owner or operator of a subject facility to provide appropriate containment and/or diversionary structure or equipment to prevent a discharge as described in §112.1(b).

20. 40 C.F.R. § 112.7(d) requires the owner or operator of a subject facility to clearly explain in the SPCC Plan why the installation of any of structures or equipment required under 40 C.F.R. § 112.7(c) is impracticable for storage tanks and the transfer areas.

21. 40 C.F.R. § 112.7(j) requires the owner or operator of a subject facility to include in the SPCC Plan a complete discussion of conformance with applicable requirements and other effective discharge prevention and containment procedures listed in Part 112, or any applicable more stringent State rules, regulations, and guidelines.

22. 40 C.F.R. 112.7(k) requires the owner or operator of a subject facility to address in the SPCC Plan either general secondary containment or alternate measures for oil-filled operational equipment.

23. 40 C.F.R. § 112.8(b)(1) requires the owner or operator of a subject facility to restrain drainage from diked storage area by valves to prevent a discharge into the drainage

system or facility effluent treatment system, except where facility systems are designed to control such discharge.

24. 40 C.F.R. § 112.8(b)(3) requires the owner or operator of a subject facility to design drainage systems from undiked areas with a potential for a discharge to flow into ponds, lagoons, or catchment basins designed to retain oil or return it to the facility.

25. 40 C.F.R. § 112.8(c)(1) requires the owner or operator of a subject facility not to use a container for the storage of oil unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature.

26. 40 C.F.R. § 112. 112.8(c)(2) requires the owner or operator of a subject facility to, among other things, restrain drainage from diked storage areas, provide a secondary means of containment for bulk storage container installations for the entire capacity of the largest single container and sufficient freeboard to contain precipitation, and ensure that diked areas are sufficiently impervious to contain discharged oil.

27. 40 C.F.R. § 112. 112.8(c)(3) requires the owner or operator of a subject facility to, among other things, not allow drainage of uncontaminated rainwater from the diked area into a storm drain or discharge of an effluent into an open watercourse, lake, or pond, bypassing the facility treatment system unless certain conditions are met.

28. 40 C.F.R. § 112.8(c)(6) requires the owner or operator of a subject facility to, among other things, test or inspect each aboveground container for integrity on a regular schedule and whenever it makes material repairs; and determine, in accordance with industry standards, the appropriate qualifications for personnel performing tests and inspections, the frequency and type of testing and inspections.

29. 40 C.F.R. § 112.8(c)(10) requires the owner or operator of a subject facility to, among other things, promptly correct visible discharges which result in a loss of oil from the container, including but not limited to seams, gaskets, piping, pumps, valves, rivets, and bolts.

30. 40 C.F.R. § 112.8(c)(11) requires the owner or operator of a subject facility to, among other things, position or locate mobile or portable oil storage containers to prevent a discharge as described in § 112.1(b).

General Provisions and Enforcement of the CWA

31. Pursuant to Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), and Executive Order 11735 (Aug. 3, 1973), EPA determined by regulation the quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare or environment of the United States, which are codified at 40 C.F.R. Part 110. Under 40 C.F.R. § 110.3, discharges of oil which may be harmful include discharges of oil that: (a) violate applicable water quality standards; or (b) cause a film or 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 adjoining shorelines.

32. Appendix A to 40 C.F.R. Part 112, Memorandum of Understanding between the Secretary of Transportation and EPA, defines “non-transportation-related” facility to include: oil production facilities including all equipment and appurtenances related thereto; oil refining facilities including all equipment and appurtenances related thereto; oil storage facilities including all equipment and appurtenances related thereto, as well as fixed bulk plant storage and terminal oil storage facilities; industrial, commercial, agricultural or public facilities which use and store oil; and waste treatment facilities, including in-plant pipelines, effluent discharge lines, and storage tanks.

33. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as the waters of the United States, including the territorial seas. The regulations at 40 C.F.R. § 112.2 further define “navigable waters” to include: all navigable waters of the United States, as defined in judicial decisions prior to passage of the 1972 Amendments to the CWA and tributaries of such waters; interstate waters; intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; and intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce.

34. Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2, define “onshore facility” as any facility of any kind located in, on, or under any land within the United States, other than submerged land.

35. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2, define “oil” as oil of any kind and in any form, including but not limited to: petroleum, fuel oil, oil refuse, oil sludge as well as vegetable oils, animal oils, fats and greases.

36. Section 311(a)(6)(B) of the CWA, 33 U.S.C. § 1321(a)(6)(B), and 40 C.F.R. § 112.2, define “owner or operator” in the case of an onshore facility as any person owning or operating such onshore facility.

37. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2, define “person” as including an individual, firm, corporation, association, and a partnership.

38. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), and 40 C.F.R. § 112.2 define “discharge” to include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

39. EPA may assess a class II civil penalty against any owner, operator, or person in charge of any onshore facility who fails or refuses to comply with any regulations issued under

Section 311(j) of the CWA, 33 U.S.C. 1321(j), pursuant to Section 311(b)(6)(A)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(A)(ii).

40. For violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), EPA has authority, under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), as amended by the Debt Collection Improvement Act and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, and implemented by 40 C.F.R. Part 19, Adjustment of Civil Monetary Penalties for Inflation, to file an Administrative Complaint seeking a civil penalty of \$22,324 per violation, or seeking \$22,324 per day for each day during which a violation continues, up to a maximum of \$279,036 for violations occurring after November 2, 2015 and penalties assessed after January 6, 2023.

Factual Allegations and Alleged Violations

41. Respondent is a chemical manufacturer that processes natural fats and oils into intermediates for consumer products and industrial products.

42. Respondent engages in storing, transferring, using, and distributing oil and oil products at the facility located at 8300 W. Rt. 24, Mapleton, Illinois (“Facility”).

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

44. Respondent is an “owner” and “operator” of the Facility 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.

45. The Facility is located on land within the United States and is therefore an “onshore facility” as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

46. The Facility stores and uses petroleum and non-petroleum based oils. Non-petroleum based oils include canola oil, tallow, and coconut oil.

47. The Facility is an oil storage facility and is therefore an onshore “non-transportation-related” facility within the meaning of 40 C.F.R. Part 112, Appendix A.

48. The Facility has an aggregate above-ground storage capacity of greater than 2 million gallons of oil in tanks and containers.

49. The oil that Respondent stores, handles, processes, distributes and/or consumes at the Facility could reasonably be expected to discharge to the Illinois River.

50. Respondent is an owner and/or operator of a non-transportation-related onshore facility engaged in storing, processing, transferring, using or distributing oil and oil products, which, due to its location, could reasonably be expected to discharge oil in quantities that may be harmful as described in 40 C.F.R. Part 110 into or on the navigable waters or adjoining shorelines within the meaning of Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), and 40 C.F.R. § 112.1, and is therefore subject to the oil pollution prevention regulations at 40 C.F.R. Part 112.

51. Respondent is subject to the spill prevention, control and countermeasure plan regulations and is therefore required to prepare and implement a SPCC Plan in accordance with the requirements of 40 C.F.R. Part 112.

52. From August 14 through August 17, 2017, EPA conducted an inspection at the Facility (“the facility inspection”.) The Respondent provided the inspectors with a copy of a SPCC Plan with a cover date of January 2015.

53. On March 24, 2021, Respondent submitted follow-up information to EPA’s inspection. Respondent included a copy of an updated SPCC Plan dated January 2015.

54. From January 2015 to February 2023, Respondent failed to review and evaluate the SPCC Plan at least once every five years from the date of the last review as required by 40 C.F.R. § 112.5(b).

55. From January 2015 to February 2023, Respondent's 2015 SPCC Plan diagrams did not include the fixed tanks containing fatty acids and fatty acid derivatives (Tanks 1006, 2025, 2036, 3056, 3057, 3066, 3070, 3085, 3087, 3090, 3095, 3097), three hot oil tanks, oil-filled manufacturing equipment (Nitriles Reactors 1, 2, 3), oil-filled operating equipment (hot oil systems), six 60-gal drums in the boilerhouse, four 60-gal drums in the maintenance area, twelve 60-gal drums and twenty-five 55-gal drums in the oil storage shed, loading/unloading areas, loading/unloading racks, and piping as required by 40 C.F.R. § 112.7(a)(3).

56. From January 2015 to February 2023, Respondent's 2015 SPCC Plan failed to describe the type of oil in each fixed container and its storage capacity. Specifically, the plan does not describe the fixed tanks containing fatty acids and fatty acid derivatives (Tanks 1006, 2025, 2036, 3056, 3057, 3066, 3070, 3085, 3087, 3090, 3095, 3097), three hot oil tanks, oil-filled manufacturing equipment (Nitriles Reactors 1, 2, 3) and oil-filled operating equipment (hot oil systems) as required by 40 C.F.R. § 112.7(a)(3)(i).

57. From January 2015 to February 2023, Respondent's 2015 SPCC Plan failed to describe that the railcar unloading operator performs multiple duties during transfer operations but that he checks the transfer periodically, as required by 40 C.F.R. § 112.7(a)(3)(ii).

58. From January 2015 to February 2023, Respondent's 2015 SPCC Plan failed to describe discharge or drainage controls such as secondary containment, equipment, and procedures for control of a discharge. Specifically, the Plan does not describe the Aeration and Settling Basins that are used as secondary containment for virtually all operations involving fats

and oils, fatty acids, fatty acids derivatives and transformers, as required by 40 C.F.R. § 112.7(a)(3)(iii).

59. From January 2015 to February 2023, Respondent's 2015 SPCC Plan failed to include a prediction of the direction, rate of flow, and total quantity of potential of oil spills for the fixed tanks containing fatty acids and fatty acid derivatives, three hot oil tanks, oil-filled manufacturing equipment and oil-filled operating equipment experience indicates a reasonable potential for equipment failure, as required by 40 C.F.R. § 112.7(b).

60. From January 2015 to February 2023, Respondent's 2015 SPCC Plan failed to adequately and accurately discuss provisions for appropriate containment and/or diversionary structures or equipment to prevent a discharge from the Facility as described in §112.1(b). Specifically, the Plan did not discuss the containment for the oil-filled manufacturing equipment and oil-filled operating equipment as required by 40 C.F.R. § 112.7(c).

61. From January 2015 to February 2023, Respondent's 2015 SPCC Plan failed to clearly explain why the installation of structures or equipment for storage tanks 1001, 1002, 1003, 1004, 1005, 1014, and the railcar/tanker truck transfer is impracticable, as required by 40 C.F.R. § 112.7(d).

62. From January 2015 to February 2023, Respondent's 2015 SPCC Plan failed to include a complete discussion of conformance with applicable requirements and other effective discharge prevention and containment procedures listed in Part 112, or any applicable more stringent State rules, regulations, and guidelines, as required by 40 C.F.R. § 112.7(j).

63. From January 2015 to February 2023, Respondent's 2015 SPCC Plan failed to address either general secondary containment or alternate measures for the transformers located outside the trench system and Aeration and Settling Basins, as required by 40 C.F.R. § 112.7(k).

64. From January 2015 to February 2023, Respondent's 2015 Plan failed to describe how the drainage from all the diked areas are restrained to prevent a discharge into the drainage system or facility effluent treatment system, as required by 40 C.F.R. § 112.8(b)(1).

65. From January 2015 to February 2023, Respondent's 2015 Plan failed to describe the Aeration and Settling Basins which serves the undiked areas in the process area, and the area east of the facility that drains to Outfall 001, as required by 40 C.F.R. § 112.8(b)(3).

66. From August 2017 to October 2021, Respondent had several bulk storage containers at the facility that were found to be leaking (T-2025) or in service without repairs required to return to service by the qualified tank inspector (T-1003, T-1005). Thus, these containers were no longer compatible with the materials they contain, in violation of 40 C.F.R. § 112.8(c)(1).

67. From January 2015 to February 2023, Respondent's 2015 Plan failed to state that all bulk storage container installations are provided with a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation, and ensure that diked areas are sufficiently impervious to contain discharged oil as required by 40 C.F.R. § 112.8(c)(2).

68. From January 2015 to February 2023, Respondent's 2015 Plan failed to address that some diked areas may be drained to the stormwater pond which can then be transferred to the 100 Acres Lake, as required by 40 C.F.R. § 112.8(c)(3).

69. From January 2015 to August 2022, Respondent failed to test or inspect each aboveground container for integrity on a regular schedule. The facility has developed a schedule for integrity testing consistent with industry standards, but it has not always met the established testing schedule, as required by 40 C.F.R. § 112.8(c)(6).

70. From January 2015 to August 2022, Respondent failed to promptly correct visible discharges which result in a loss of oil from the container, as required by 40 C.F.R.

§ 112.8(c)(10).

71. From January 2015 to February 2023, Respondent's 2015 Plan failed to indicate that mobile or portable oil storage containers are positioned to prevent a discharge as described in § 112.1(b). During the 2017 inspection, the inspectors observed oil drums stored in several storage areas, but the plan did not describe how these drums are positioned to prevent a discharge, as required by 40 C.F.R. § 112.8(c)(11).

72. On August 31, 2022, Respondent submitted an updated SPCC Plan for the Facility to EPA dated August 30, 2022 (the August 2022 Plan).

73. On October 14, 2022, EPA provided comments to Respondent on the August 2022 Plan.

74. On February 13, 2023, Respondent submitted an updated SPCC Plan for the Facility to EPA dated February 8, 2023 (the February 2023 Plan).

75. On July 25, 2023, Respondent submitted an updated SPCC Plan for the Facility to EPA dated June 15, 2023 (the June 2023 Plan).

76. Respondent's June 2023 SPCC Plan no longer asserts impracticability for storage tanks 1001, 1002, 1003, 1004, 1005, 1014, and the railcar/tanker truck transfer area.

77. Respondent's June 2023 SPCC Plan requires it to add a liner to the containment area for the railcar storage spur, which will be constructed of either a synthetic liner material or concrete that is sufficiently impervious by December 31, 2023. Additionally, Respondent's June 2023 SPCC Plan requires it to install a concrete barrier with a gate valve near the railcar storage spur by December 31, 2023. The storage of railcars will not be east of the road / concrete

barrier. The area that would contain the discharge is large enough to contain the largest capacity of a railcar, which is 30,000 gallons, plus sufficient freeboard. Respondent's June 2023 SPCC Plan identifies this area as currently large enough to contain over 150,000 gallons; any modifications that decrease this capacity will not decrease the capacity to less than 30,000 gallons plus sufficient freeboard.

78. On August 30, 2022, Respondent informed EPA that Tank T-2025 and the other tanks found leaking during the inspection were repaired on November 9, 2017. Tank T-2025 was replaced in 2018. Tank T-1003 was cleaned and it is out of service. Tank T-1005 was taken out of service and it was inspected according to API standards and repaired in October 2021.

79. On August 30, 2022, Respondent informed EPA that the facility developed a corrective action schedule to ensure all SPCC tanks have proper integrity testing. Respondent also stated that it will permanently close any tanks listed currently as out of service. Both schedules are included in the June 2023 SPCC Plan (Table 13-1).

80. On August 30, 2022, Respondent informed EPA that the facility has remediated all of the spills the inspectors observed during the 2017 inspection.

Civil Penalty

81. Based on analysis of the factors specified in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), the facts of this case, and the *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act*, dated August 1998, Complainant has determined that an appropriate civil penalty to settle this action is \$93,707.

82. Within 30 days of the effective date of this CAFO, Respondent must pay a \$93,707 civil penalty by sending a cashier's or certified check by express mail (non-U.S. Postal Service), payable to "Treasurer, United States of America," to: U.S. Bank

U.S. Environmental Protection Agency
Government Lockbox 979078
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note Respondent's name, "OSLTF – 311," and the docket number of this CAFO.

83. Respondent must send a notice of payment to EPA that states Respondent's name and the docket number of this CAFO at the following email addresses when it pays the penalty:

Silvia Palomo
Superfund and Emergency Management Division
U.S. Environmental Protection Agency, Region 5
Palomo.silvia@epa.gov

Robert H. Smith
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
smith.roberth@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

84. This civil penalty is not deductible for federal tax purposes.

85. If Respondent does not pay timely the civil penalty or any penalty due under the below paragraph, Complainant may request the United States Department of Justice to 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 under Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

86. Respondent must pay the following on any amount overdue under this CAFO: the interest accrued on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2); the United States'

enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings; a nonpayment penalty each quarter during which the assessed penalty is overdue, which shall be 20 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. *See* 33 U.S.C. § 1321(b)(6)(H).

General Provisions

87. The parties consent to service of this CAFO by email at the following email addresses: smith.roberth@epa.gov (for Complainant) and Sean.Bezark@gtlaw.com (for Respondent). Respondent understands that the CAFO will become publicly available upon proposal for public comment and upon filing.

88. Full payment of the penalty as described in paragraph 82, above, and full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

89. Full payment of a penalty described in paragraph 82, above, and full compliance with this CAFO shall not in any case affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

90. This CAFO does not affect Respondent's responsibility to comply with the CWA and other applicable federal, state, or local laws and permits.

91. Respondent certifies that it is complying with Section 311 of the CWA, 33 U.S.C. § 1321, the implementing oil pollution prevention regulations at Part 112.

92. This CAFO constitutes a "prior violation" as that term is used in EPA's *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* to determine

Respondent's "history of prior violations" under Section 311(b)(8) of the CWA 33 U.S.C. § 1321(b)(8).

93. The terms of this CAFO bind Respondent and its successors and assigns.

94. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CAFO.

95. Each party agrees to bear its own costs and attorney fees in this action.

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

97. The parties acknowledge and agree that final approval by EPA of this CAFO is subject to Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i) which provides, among other procedural requirements, public notice and a reasonable opportunity to comment on any proposed penalty order.

98. The parties acknowledge and agree that final approval by EPA of this CAFO is subject to 40 C.F.R. § 22.45(c)(4) which sets forth requirements under which a person not a party to this proceeding may petition to set aside a consent agreement and final order on the basis that material evidence was not considered.

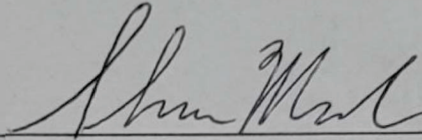
99. Unless an appeal for judicial review is filed in accordance with Section 311(b)(6)(G) of the CWA, 33 U.S.C. § 1321(b)(6)(G) or 40 C.F.R. § 22.45, this CAFO shall become effective 30 days after the date of issuance, which is the date that the Final Order contained in this CAFO is signed by the Regional Judicial Officer or Regional Administrator.

**Consent Agreement and Final Order
In the Matter of: Evonik Corporation
Docket No. CWA-05-2024-0001**

Evonik Corporation, Respondent

September 6, 2023

Date



Shawn Marsh

Vice President

Environment, Safety, Health & Security North America
Evonik Corporation

United States Environmental Protection Agency, Complainant

September 12, 2023

Date

DOUGLAS
BALLOTTI

Digitally signed by
DOUGLAS BALLOTTI
Date: 2023.09.12
13:48:55 -05'00'

Douglas Ballotti

Director

Superfund & Emergency Management Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Evonik Corporation
Docket No. CWA-05-2024-0001

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective 30 days after filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

By: _____
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Date: _____