



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

NOV 14 2014

REPLY TO THE ATTENTION OF:
SE-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dan Krueger
President
Kruger Commodities, Inc.
5900 Old Allegan Road
Hamilton, Michigan 49419

Re: Kruger Commodities, Inc.
Consent Agreement and Final Order – Docket No: **CWA-05-2015-0003**

Dear Mr. Kruger:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed with the Regional Hearing Clerk on November 14, 2014.

The civil penalty in the amount of \$15,402 is to be paid in the manner prescribed in paragraphs 20 through 26. Please be certain to reference your check and transmittal letter with docket number CWA-05-2015-0003. Your payment is due by December 15, 2014.

Please feel free to contact Joseph Ulfing at (312) 353-8205 if you have any questions regarding the enclosed document. Please direct any legal questions to Sherry Estes, Associate Regional Counsel, at (312) 886-7164. Thank you for your assistance in resolving this matter.

Sincerely yours,

A handwritten signature in cursive script that reads "Lawrence Schmitt".

Lawrence Schmitt
Acting Chief
Enforcement and Compliance Branch

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

)	
)	
IN THE MATTER OF)	CWA SECTION 311 CLASS I
)	CONSENT AGREEMENT
Kruger Commodities, Inc.)	AND FINAL ORDER
Hamilton, Michigan)	
)	33 U.S.C. § 1321
)	
Respondent.)	DOCKET NO. CWA
)	
)	CWA-05-2015-0003
)	



CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 311(b)(6)(B)(i) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990, and Sections 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. The Complainant is, by lawful delegation, the Director of the Superfund Division, United States Environmental Protection Agency, Region 5.
3. The Respondent is Kruger Commodities, Inc., a corporation doing business in the State of Michigan.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 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 assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

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

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent waives its right to request a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, its right to appeal this CAFO, and consents to the issuance of this CAFO without further adjudication.

Statutory and Regulatory Background

10. 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.

11. The regulation at 40 C.F.R. § 110.3 specifies the quantity of oil that has been determined may be harmful to the public health or welfare or environment of the United States. The quantity of oil includes discharges of oil that cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines.

General Allegations

12. Kruger Commodities, Inc. (Kruger Commodities) is a "person" within the meaning of Sections 311(a)(7) and 502(5) of the Act.

13. The Kruger Commodities tanker truck is an "onshore facility" within the meaning of Section 311(a)(10) of the Act.

14. Kruger Commodities is an "owner or operator" within the meaning of Section 311(a)(6) of the Act.

15. The Crooked River is a navigable water of the United States as defined in Section 502(7) of the Act, and 40 C.F.R. § 110.1.

COUNT I

16. The allegations in paragraphs 1 through 15, above, are incorporated by reference.

17. The Emmet County Sheriff Department Incident/Investigation Report dated June 21, 2013 states that on June 11, 2013, a vehicle attempting to merge into traffic impacted the Kruger Commodities truck, causing it to roll over. The Kruger Commodities truck then released approximately 1,600 to 1,733 gallons of used cooking oil from its tanker truck at the intersection of M-68 and M-31 in Alanson, Michigan.

17. The oil flowed from the tanker truck into the Crooked River and its adjoining shorelines via a storm drain within the roadway.

18. The oil caused a film or sheen upon or discoloration of the surface of the Crooked River and its adjoining shorelines.

19. The discharge of oil on June 11, 2013, from the Kruger Commodities facility into or upon the Crooked River and its adjoining shorelines in a quantity that has been determined may be harmful is a violation of Section 311(b)(3) of the Act.

Civil Penalty

20. The Administrator of EPA may assess a civil penalty from \$16,000 per day of violation up to a total of \$37,500 for violations with a moderate environmental impact that occurred after January 12, 2009, according to Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. §1321(b)(6)(B)(i), and 40 C.F.R. Part 19.

22. Under Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), the Administrator of EPA must consider the following factors when assessing an administrative penalty under Section 311(b):

- a. the seriousness of the violations;
- b. the economic benefit to the violator, if any, resulting from the violations;
- c. the degree of culpability involved;
- d. any other penalty for the same incident;
- e. any history of prior violations;
- f. the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge;
- g. the economic impact of the penalty on the violator, and
- h. any other matters as justice may require.

23. Based on an analysis of the factors listed in paragraph 22, above and in the Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act, with respect to the facts of this case, Complainant has determined that an appropriate civil penalty to settle this action is \$15,402.

24. Within 30 days after the effective date of this CAFO, Respondent shall pay a \$15,402 civil penalty by cashier's or certified check, or by electronic funds transfer (ETF). If paying by check, Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311" and the docket number of this case. If the Respondent sends payment by check, the payment shall be addressed to:

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

If paying by EFT Respondent shall transfer \$15,402 to:

Federal Reserve Bank of NY
ABA 021030004
Account 68010727
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the EFT message shall read "D 68010727 Environmental Protection Agency."

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

25. The Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the following persons:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Joseph Ulfig, P.E. (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Sherry L. Estes
Associate Regional Counsel (C-14J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

26. Failure by Respondent to pay timely this civil penalty 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

27. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

28. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

29. This CAFO does not affect Respondent's responsibility to comply with the Clean Water Act and other applicable federal, state and local laws.

30. Respondent certifies that it is now complying at the onshore facility with the Clean Water Act.

31. The CAFO shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

32. The CAFO 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 thereunder, 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.

33. If Respondent fails to comply with this CAFO, Respondent waives any rights it may possess in law or equity to challenge the authority of the EPA to bring a civil action in the appropriate United States District Court to compel compliance with this CAFO and/or seek an additional penalty for non-compliance with the CAFO.

34. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CAFO.

35. The undersigned representative of each Party to this CAFO certifies that he or she is duly authorized by the Party he or she represents to enter into the terms and bind that Party to them.

36. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.

Kruger Commodities, Inc., Respondent

Date: 10-2-14

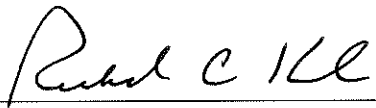


Dan Kruger
President
Kruger Commodities, Inc.
Hamilton, Michigan

In the Matter of: Kruger Commodities, Inc. – CAFO

U.S. Environmental Protection Agency, Complainant

Date: 11-4-14



Richard C. Karl
Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Kruger Commodities, Inc. – CAFO

Docket No. CWA-05-2015-0003

FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon 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.

Date: 11-12-14



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the Matter of: Kruger Commodities, Inc. – CAFO

Docket No. CWA-05-2015-0003

Certificate of Service

I, Jarrah P. Sanders, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U. S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, U.S. Environmental Protection Agency, Region 5, and mailed the second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing it in the custody of the United States Postal Service addressed as follows:

Dan Kruger, President
Kruger Commodities, Inc.
5900 Old Allegan Road
Hamilton, Michigan 49419


Original Copy of the CAFO mailed to

Regional Hearing Clerk
U.S. EPA Region 5

Cc of the CAFO mailed to

Matthew D. Zimmerman
Varnum Attorneys at Law
P.O. Box 352
Grand Rapids, MI 49501-0352

on the 13 day of November, 2014



Jarrah P. Sanders
U.S. Environmental Protection Agency
Region 5