



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

MAY 27 2015

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ottar Magnusson
President
Big Oat's Oil Field Supply Company, LLC
38700 Pelton Road
Willoughby, Ohio 44094

Re: Consent Agreement and Final Order
Big Oat's Oil Field Supply Company, LLC – Willoughby, Ohio
Docket No: CWA-05-2015-0013

Dear Mr. Magnusson:

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

May 27, 2015.

The civil penalty in the amount of \$12,600 is to be paid in the manner prescribed in paragraphs 46 through 50 of the CAFO. Please be certain to reference your check and transmittal letter with docket number CWA-05-2015-0013. Your payment is due by June 26, 2015.

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 Andre Daugavietis, Associate Regional Counsel, at (312) 886-6663. Thank you for your assistance in resolving this matter.

Sincerely yours,

M. Cecilia Moore, Chief
Enforcement and Compliance Branch

Enclosure

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(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”

11. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to the EPA his authority under Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), to issue the regulations referenced in

the preceding paragraph for non-transportation-related onshore facilities.

12. EPA subsequently promulgated the Spill Prevention, Control, and Countermeasure (SPCC) regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the Act, 33 U.S.C. § 1251 *et seq.* The SPCC regulations established certain procedures, methods and requirements for each owner or operator of a non-transportation-related onshore facility, if such facility, due to its location, 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 the EPA has determined in 40 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States.

13. The regulation at 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated facility prepare and implement a written SPCC plan in accordance with 40 C.F.R. § 112.7 and any other applicable sections of 40 C.F.R. Part 112.

14. The regulation at 40 C.F.R. § 112.8 requires that the owner or operator of an SPCC-regulated facility meet the specific discharge prevention and containment procedures listed in that section.

15. Specific regulatory requirements applicable to the Facility are set forth in more detail below.

16. Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and the regulation at 40 C.F.R. § 19.4, authorize EPA to assess a civil penalty for violations of the SPCC regulations promulgated pursuant to Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), of up to \$16,000 per day for violations that occurred after January 12, 2009, up to a maximum of \$37,500.

Factual Allegations and Alleged Violation

17. Respondent is a limited liability corporation organized under the laws of Ohio with a place of business located at 38700 Pelton Road, Willoughby, Ohio. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.

18. Respondent is the owner and operator, within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of an onshore bulk oil storage facility located on the Respondent's place of business ("the Facility").

19. Oil from the Facility, in the event of a discharge, could reasonably be expected to flow to storm sewer access points located within the Facility, and/or an unnamed ditch that runs adjacent to the Facility. These storm sewer access points and/or an unnamed ditch that runs adjacent to the facility discharge into the Chagrin River, approximately one mile away from the Facility. The Chagrin River ultimately discharges into Lake Erie.

20. The Facility has above-ground storage capacity greater than 1,320 gallons of oil in containers each with a shell capacity of at least 55 gallons.

21. The Chagrin River and Lake Erie are navigable waters of the United States within the meaning of 40 C.F.R. § 112.2 and Section 502(7) of the Act, 33 U.S.C. § 1362(7).

22. Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products located at the Facility.

23. The Facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

24. The Facility is an onshore facility within the meaning of Section 311(a)(10) of the

Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

25. The Facility is therefore a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity (“an SPCC-regulated facility”).

26. Operations commenced at the Facility over fifty years ago.

27. Pursuant to the Act, E.O. 12777, and 40 C.F.R. § 112.1, as the owner and operator of an SPCC-regulated facility, Respondent is subject to the SPCC regulations.

28. As set forth above, the regulation at 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated facility prepare and implement a written SPCC plan in accordance with 40 C.F.R. § 112.7 and any other applicable section of 40 C.F.R. Part 112.

29. On May 28, 2013, EPA inspected the Facility and evaluated the Facility’s SPCC plan, which was prepared on September 5, 2009.

30. The regulation at 40 C.F.R. § 112.5 requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to amend the facility’s SPCC Plan when there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge. Respondent did not amend the Facility’s SPCC Plan within six months of removing a 13,000 gallon diesel tank in 2009, after installing three fuel tanks at the facility in 2010, nor after constructing or reutilizing an on-site Fuel Barn for storage of mobile or portable containers, in violation of 40 C.F.R. § 112.5.

31. The regulation at 40 C.F.R. § 112.7(a)(1) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to prepare a SPCC Plan that includes a discussion of the facility’s conformance with each of the requirements listed in Part 112. Respondent did not

include all applicable rule requirements in the Facility's SPCC Plan, such as those pertaining to mobile or portable containers or integrity testing, among other requirements, in violation of 40 C.F.R. § 112.7(a)(1).

32. The regulation at 40 C.F.R. § 112.7(a)(3) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to prepare a SPCC Plan that describes the physical layout of the facility and includes a diagram that identifies the location and contents of all regulated fixed oil storage containers, storage areas where mobile or portable containers are located, transfer stations, and connecting pipes. During the inspection of the Facility, EPA observed three fuel tanks and the Fuel Barn, but they were not described within the Facility's SPCC Plan. The Facility's SPCC Plan does not include a complete description of the physical layout of the facility, a diagram that identifies the location and contents of all regulated fixed oil storage containers, nor storage areas for mobile or portable containers, in violation of 40 C.F.R. § 112.7(a)(3) and 40 C.F.R. § 112.7(a)(1).

33. The regulation at 40 C.F.R. § 112.7(a)(3)(i) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to prepare a SPCC Plan that addresses the type of oil and storage capacity of each fixed container; the type of oil and storage capacity for each mobile or portable container or an estimate of their potential number, the types of oil, and anticipated storage capacities. The Facility's SPCC Plan did not address the type of oil and storage capacity of each fixed container at the Facility; the type of oil and storage capacity for each mobile or portable container or an estimate of their potential number, the types of oil, and anticipated storage capacities at the Facility, in violation of 40 C.F.R. § 112.7(a)(3)(i) and 40 C.F.R. § 112.7(a)(1).

34. The regulation at 40 C.F.R. § 112.7(b) provides that where experience indicates a reasonable potential for equipment failure, the SPCC Plan must include a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure. The Facility's SPCC Plan did not include an adequate prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the Facility as a result of each type of major equipment failure, in violation of 40 C.F.R. § 112.7(b).

35. The regulation at 40 C.F.R. § 112.7(c)(1) requires that appropriate containment, diversionary structures, or equipment be provided to prevent a discharge as described in § 112.1(b). The Facility's SPCC Plan did not completely describe the appropriate containment and/or diversionary structures or equipment in place at the Facility to prevent a discharge, nor were the requisite containment and/or diversionary structures, nor equipment in place at the Facility to prevent a discharge as described in § 112.1(b), in violation of 40 C.F.R. § 112.7(c)(1) and 40 C.F.R. § 112.7(a)(1).

36. The regulation at 40 C.F.R. § 112.7(e) requires that inspections and tests are conducted in accordance with written procedures, that records of inspections or tests are signed by a supervisor or inspector, and that records are kept with the SPCC Plan for at least three years. During the inspection of the Facility, records related to tank truck inspection and testing of liquid level sensing equipment were not available for review, in violation of 40 C.F.R. § 112.7(e).

37. The regulation at 40 C.F.R. § 112.7(h)(2) requires that an interlocked warning light or physical barriers, warning signs, wheel chocks, or vehicle brake interlock system in the area adjacent to the loading or unloading rack to prevent vehicles from departing before

complete disconnection of flexible or fixed oil transfer lines. Such warning systems, signs, or wheel chocks were not in place during the inspection of the Facility, in violation of 40 C.F.R. § 112.7(h)(2) and 40 C.F.R. § 112.7(a)(1).

38. The regulation at 40 C.F.R. § 112.8(a) requires owners or operators of facilities subject to 40 C.F.R. Part 112 to meet the general requirements for the Plan listed under 40 C.F.R. § 112.7.

39. The regulation at 40 C.F.R. § 112.8(b)(3) requires that facility drainage systems from undiked areas with a potential for a discharge be designed to flow into ponds, lagoons or catchment basins designed to retain oil or return it to the facility. The Facility's SPCC Plan does not adequately describe each of the undiked areas with a potential for discharge, the Facility's drainage system(s), how each of the undiked areas would drain to the Facility's oil/water separator, nor how the Facility's oil/water separator is operated and maintained to retain oil. During the inspection of the Facility, EPA observed distressed vegetation and staining from a spill within an undiked area that migrated off of the concrete pad, through the fence line, terminating near the unnamed ditch or creek that bounds the Facility. These are violations of 40 C.F.R. § 112.8(b)(3) and 40 C.F.R. § 112.8(a).

40. The regulation at 40 C.F.R. § 112.8(b)(4) requires that facility drainage systems not engineered as in 40 C.F.R. § 112.8(b)(3) have the final discharge of all ditches inside the facility be equipped with a diversion system that would retain oil in the facility in the event of an uncontrolled discharge. The Facility's SPCC Plan does not adequately describe each of the undiked areas with a potential for discharge, the Facility's drainage system(s), how each of the undiked areas would drain to the Facility's oil/water separator, nor how the Facility's oil/water

separator is operated and maintained to retain oil. During the inspection of the Facility, EPA observed distressed vegetation and staining from a spill within an undiked area that migrated off of the concrete pad, through the fence line, terminating near the unnamed ditch or creek that bounds the facility. These are violations of 40 C.F.R. § 112.8(b)(4) and 40 C.F.R. § 112.8(a).

41. The regulation at 40 C.F.R. § 112.8(c)(6) requires, among other things, that the owner or operator of an onshore facility test each aboveground container for integrity on a regular schedule, and whenever material repairs are made. The SPCC Plan must include: the appropriate qualifications for personnel performing tests and inspections; the frequency and type of testing and inspections, which take into account container size, configuration, and design; as well as the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. The Facility's SPCC Plan did not address the appropriate qualifications for personnel performing tests and inspections. During the inspection of the Facility's Tank Farm #1 area, EPA observed a container leaking oil, oil-stained gravel, oil-sheened rainwater, a number of containers with blistering paint, and extensive deterioration of several tank chimes and tank supports. These are violations of 40 C.F.R. § 112.8(c)(6) and 40 C.F.R. § 112.8(a).

42. The regulation at 40 C.F.R. § 112.8(c)(10) requires the owner or operator of an onshore facility to promptly correct visible discharges which result in a loss of oil from the container, and to promptly remove any accumulations of oil in diked areas. During the inspection of the Facility's Tank Farm #1 area, EPA observed a container leaking oil, oil-stained gravel, and oil-sheened rainwater. These are violations of 40 C.F.R. § 112.8(c)(10) and 40 C.F.R. § 112.8(a).

43. The regulation at 40 C.F.R. § 112.8(c)(11) requires that the owner or operator of an onshore facility position or locate mobile or portable containers to prevent a discharge as

described in 40 C.F.R. § 112.1(b), and that a secondary means of containment sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation is provided. The Facility's SPCC Plan did not provide accurate information on how mobile or portable containers are positioned at the Facility, nor the secondary containment available for these containers. During the inspection of the Facility, EPA observed drums stored in areas with floor drains, some of which were labeled as being drains to a waterway. In addition, during the inspection there were no secondary means of containment for these containers. These are violations of 40 C.F.R. § 112.8(c)(11) and 40 C.F.R. § 112.8(a).

44. Section 3.0 of Appendix C to 40 C.F.R. Part 112 requires that if a facility does not meet the substantial harm criteria listed in Attachment C-I to this appendix, the owner or operator shall complete and maintain at the facility the certification form contained in Attachment C-II. At the time of inspection, a completed C-II form was not available at the Facility, in violation of Section 3.0 of Appendix C to 40 C.F.R. Part 112.

45. As alleged in the preceding paragraphs, and pursuant to Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$16,000 per day for violations that occurred after January 12, 2009, up to a maximum of \$37,500.

Civil Penalty

46. Based on an analysis of the factors set forth in Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), and in the Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act, taking into account the facts of this case and information submitted by Respondent including steps that Respondent has taken to resolve the identified violations,

Complainant has determined that an appropriate civil penalty to settle this action is \$12,600.

Respondent agrees to pay this amount as a civil penalty.

47. Within 30 days after the effective date of this CAFO, Respondent shall pay the \$12,600 by cashier's or certified check, or by electronic funds transfer (EFT). 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 \$12,600 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."

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

49. 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

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

50. 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

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

52. 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.

53. This CAFO does not affect Respondent's responsibility to comply with the SPCC Rules and other applicable federal, state and local laws.

54. Respondent certifies that it is now complying at the Facility with the regulations cited above.

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

56. 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.

57. 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.

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


59. 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.

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

In the Matter of: Big Oat's Oil Field Supply Company, LLC - CAFO


Big Oat's Oil Field Supply Company, LLC, Respondent

Date: 5-1-15


Ottar Magnusson
President
Big Oat's Oil Field Supply Company, LLC
Willoughby, Ohio

U.S. Environmental Protection Agency, Complainant

Date: 5-15-15


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

In the Matter of: Big Oat's Oil Field Supply Company, LLC

Docket No. CWA-05-2015-0013

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: 26 May 2015



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

In the matter of: Big Oat's Oil Field Supply Company, LLC
Docket Number: CWA-05-2015-0013

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on May 27, 2015, this day in the following manner to the addressees:

Copy by certified mail
return-receipt requested:

Ottar Magnusson
President
Big Oat's Oil Field Supply Company, LLC
38700 Pelton Road
Willoughby, Ohio 44094

Copy by e-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: May 27, 2015



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2640 4420