



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 23 2017

REPLY TO THE ATTENTION OF:

SENT VIA E-MAIL

To: Anthony Sullivan
Attorney, Barnes & Thornburg LLP
Tony.Sullivan@btlaw.com

Re: Consent Agreement and Final Order
CountryMark Refining and Logistics LLC
Docket No: **CWA-05-2017-0012**

Anthony Sullivan, Attorney for Respondent
Barnes & Thornburg, LLP
11 South Meridian Street
Indianapolis, Indiana 46204-3535

Dear Mr. Sullivan:

Attached, please find a signed, fully-executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The original was filed on June 23, 2017, with the Regional Hearing Clerk (RHC).

Your client should pay the civil penalty in the amount of \$21,873, in the manner prescribed in paragraphs 27-30 of the CAFO. If paying by check, the client should include the notation "OSLTF - 311" and the docket number of this case CWA-05-2017-0012. Your client's payment is due within 30 calendar days of the effective date of the CAFO.

Thank you for your cooperation in resolving this matter. If you have any questions or concerns regarding this matter, please contact Ellen Riley, of my staff, at 312-886-9497 or at riley.ellen@epa.gov.

Sincerely,

Michael E. Hans, Chief
Chemical Emergency Preparedness and Prevention Section

Attachments

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CWA-05-2017-0012
)	
CountryMark Refining and Logistics LLC)	Proceeding to Assess a Class I Civil Penalty under Section 311(b)(6)(B)(i) of the Clean Water Act, 33 U.S.C. § 1321(b)(6)(B)(i)
)	
Respondent.)	
<hr/>		



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 (CWA), 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. § 22.13(b) and 22.18(b)(2) and (3).
2. The Complainant is, by lawful delegation, the Director of the Superfund Division, United States Environmental Protection Agency, Region 5 (EPA).
3. The Respondent is CountryMark Refining and Logistics LLC, (“Respondent” or “CountryMark”), a corporation doing business in the State of Indiana.
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). *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 assessment of the civil penalty specified in this CAFO and to 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 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 Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. § 22.15(c), its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706, any right to contest the allegations in this CAFO, and its right to appeal this CAFO. Respondent also consents to the issuance of this CAFO without further adjudication.

Statutory and Regulatory Background

9. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), 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.

10. The term "discharge" is defined in pertinent part to include "any spilling, leaking, pumping, pouring, emitting, emptying or dumping." Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2).

11. The term "oil" is defined in pertinent part to include "oil of any kind or in any form, including, but not limited to, petroleum, [and] fuel oil." Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2).

12. The term "navigable waters" is defined as "waters of the United States, including the territorial seas." Section 502(7) of the CWA as 33 U.S.C. § 1362(7).

13. Pursuant to Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), EPA has determined by regulation that the quantities of oil that may be harmful to the public health or welfare or the environment of the United States include discharges of oil that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines. 40 C.F.R. § 110.3.

14. Pursuant to Section 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6)(A), EPA may assess a class I or class II civil penalty against any owner, operator, or person in charge of any vessel, onshore facility or offshore facility from which oil is discharged in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

15. The term "owner or operator" is defined to include in pertinent part "any person owning or operating such onshore facility." Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6).

16. The term "person" is defined to include in pertinent part a "corporation." Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).

17. The term "onshore facility" is defined to include in pertinent part "any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States." Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

Factual Allegations and Alleged Violation

18. Respondent is a “person” within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).

19. Respondent operates the CountryMark pipeline, which transports crude oil from its Albion, Illinois gathering station to its New Harmony, Indiana booster station.

20. At all times relevant to this Complaint, the CountryMark pipeline was an “onshore facility” within the meaning of Section 311(a)(6) of the CWA 33 U.S.C. § 1321(a)(6), and Respondent was an “operator” of the facility within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

21. On or about July 13, 2015 the CountryMark pipeline failed where the pipeline crosses the Wabash River near Grayville, Illinois, causing the release of 51.5 barrels of crude oil into the Wabash River. The release constitutes a “discharge” within the meaning of Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2).

22. Crude oil is “oil” within the meaning of Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2).

23. The Wabash River flows into the Ohio River which flows into the Mississippi River. The Wabash River, the Ohio River and the Mississippi River are “navigable waters” and “waters of the United States” within the meaning of Section 502(7) of the CWA as 33 U.S.C. § 1362(7).

24. The oil was discharged in quantities that “may be harmful to the public health or welfare or the environment” by among other things “causing a sheen upon or discoloration of the surface” of the Wabash River, within the meaning of and in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3.

25. CountryMark completed emergency response activities in response to the discharged oil on or about July 18, 2015.

26. Pursuant to Section 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6)(A), EPA may assess a class I or class II civil penalty against Respondent, as the operator of the onshore facility from which the oil was discharged in violation of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

Civil Penalty

27. Based on an analysis of the factors set forth in Section 311(b)(8) of the CWA, 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, Complainant has determined that an appropriate civil penalty to settle this action is \$21,873. Respondent agrees to pay this amount as a civil penalty.

28. Within 30 days after the effective date of this CAFO, Respondent shall pay a \$21,873 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, Missouri 63197-9000

If paying by EFT Respondent shall transfer \$21,873 to:

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

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

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

30. 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, Illinois 60604

Ellen Riley (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
United States Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

Eaton Weiler
Associate Regional Counsel (C-14J)
United States Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

31. Failure by Respondent to pay timely this civil penalty may subject Respondent to a civil action to collect any unpaid portion of the assessed penalty, plus interest, attorney’s fees, costs, and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the

CWA, 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

32. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: weiler.eaton@epa.gov (for Complainant), and Tony.Sullivan@btlaw.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

34. This CAFO does not affect the rights of the Administrator or the United States to pursue applicable injunctive or other equitable relief or criminal sanctions for any other violations of law not alleged in this CAFO.

35. This CAFO shall not affect Respondent's right to assert any defense in any action by the Administrator or the United States to pursue applicable injunctive or other equitable relief or criminal sanctions for any violations of law.

36. This CAFO does not affect Respondent’s responsibility to comply with the CWA and any other applicable federal, state and local laws.

37. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to federal laws and regulations administered by the EPA.

38. Respondent certifies that it has addressed the violations alleged in this CAFO.

39. This CAFO is a “final order” for purposes of 40 C.F.R. § 22.31 and the August 1998 CWA Penalty Policy.

40. The CAFO shall be binding upon Respondent and Respondent’s officers, directors, agents, and successors or assigns.

41. The CAFO does not constitute a waiver, suspension, or modification of the requirements of Section 311 of the CWA, 33 U.S.C. § 1321, or any regulations promulgated thereunder.

42. 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.


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

44. 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.

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

**In the Matter of: CountryMark Refining and Logistics LLC
CountryMark Refining and Logistic LLC, Respondent**


Date: 6/12/17



Pat Ward
Vice-President of Operations

U.S. Environmental Protection Agency, Complainant

Date: 06/21/2017



Margaret M. Guerriero, Acting Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: CountryMark Refining and Logistics LLC
Docket No. CWA-05-2017-0012

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: June 21, 2017



Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

In the matter of: **CountryMark Refining and Logistics LLC**
Docket Number: **CWA-05-2017-0012**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, Docket Number CWA-05-2017-0012, which was filed on June 23, 2017, in the following manner to the addressees:

Copy by e-mail to

Respondent:

(Authorized in CAFO)

Anthony Sullivan, Attorney for Respondent
Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, IN 46204-3535
Tony.Sullivan@btlaw.com

Copy by e-mail to

Attorney for Complainant:

Eaton Weiler
weiler.eaton@epa.gov

Copy by e-mail to

Case Assignee:

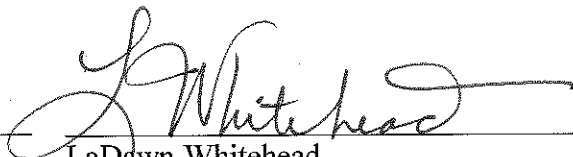
Ellen Riley
riley.ellen@epa.gov

Copy by e-mail to

Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: June 23, 2017



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