

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In The Matter Of:) **Docket No. CWA-05-2022-0003**
)
ExxonMobil Joliet Refinery) **Proceeding to Assess a Class II Civil Penalty**
Channahon, IL) **Under Section 311(b)(6) of the Clean Water**
) **Act, 33 U.S.C. § 1321(b)(6)**
Respondent)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 311(b)(6)(A)(i) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6)(A)(i), 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 & Emergency Response Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is ExxonMobil Oil Corporation (ExxonMobil) a corporation doing business in the State of 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) of the CWA, 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

Prohibition of oil or hazardous substance discharges

9. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil or hazardous substances into or upon, among other things, 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.

General provisions and enforcement of the CWA

10. 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.

11. 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.

12. 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. § 120.2 further define “waters of the United States” to include waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including waters which are subject to the ebb and flow of the tide; tributaries of such waters; and lakes, ponds and impoundments of such waters.

13. 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.

14. 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, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

15. 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.

16. 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.

17. 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.

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

19. EPA may assess a class II civil penalty of up to \$19,505 per violation for each day of violation up to a maximum of \$243,808 for violations that occurred after November 2, 2015, under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

20. ExxonMobil owns and operates a petroleum refinery located at 25915 South Frontage Road, Channahon, Illinois (Facility).

21. 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.

22. 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.

23. 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.

24. The Des Plaines River is a “navigable water” of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2.

25. On or around June 20, 2018, Respondent discharged 36,000 gallons of mixed oil and partially treated wastewater into the Des Plaines River near Channahon, Illinois. Respondent’s discharge of an estimated 36,000 gallons of mixed oil and partially treated wastewater was a discharge of oil into or upon navigable waters of the United States in such quantities as may be harmful, in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

Civil Penalty

26. 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 \$59,473.

27. Within 30 days of the effective date of this CAFO, Respondent must pay a \$59,473 civil penalty by either of the following:

- a. Sending a cashier’s or certified check by express mail, payable to

“Treasurer, United States of America,” to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note that the payment is made for CWA civil penalties to be deposited into the Oil Spill Liability Trust Fund (OSLTF) pursuant to Section 311(s) of the CWA, 33 U.S.C. § 1321(s), and 26 U.S.C. § 9509(b)(8) and must include Respondent's name, "OSLTF – 311," and the docket number of this CAFO.

b. An on-line payment. To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

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

Silvia Palomo (SC-5J)
Enforcement Officer
U.S. Environmental Protection Agency, Region 5
palomo.silvia@epa.gov

Matthew Russo (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
russo.matthew@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604 or
whitehead.ladawn@epa.gov

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

30. If Respondent does not timely pay the civil penalty, 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.

31. 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

32. The parties consent to service of this CAFO by email at the following valid email addresses: Matthew Russo, at russo.matthew@epa.gov (for Complainant) and Chris M. Carron, at chris.m.carron@exxonmobil.com (for Respondent).

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

34. Full payment of the penalty described 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.

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

36. Respondent certifies that it is complying with Section 311 of the CWA, 33 U.S.C. § 1321 and its implementing regulations.

37. 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).

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

39. 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.

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

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

42. 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.

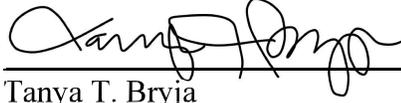
43. The parties acknowledge and agree that final approval by EPA of this CAFO is subject to 40 C.F.R. § 22.45(c)(4) which sets forth requirements under which a person not a party to this proceeding may petition to set aside a CAFO on the basis that material evidence was not considered.

44. 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.

ExxonMobil Oil Corporation, Respondent

Jan. 6, 2022

Date



Tanya T. Bryja
Refinery Manager
ExxonMobil Joliet Refinery
25915 S. Frontage Road
Channahon, IL 60410

United States Environmental Protection Agency, Complainant

January 10, 2022

Date



Digitally signed by
DOUGLAS BALLOTTI
Date: 2022.01.10
10:46:54 -06'00'

Douglas Ballotti
Director
Superfund & Emergency Response Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: ExxonMobil Joliet Refinery
Docket No. CWA-05-2022-0003

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 unless further petition for review is filed by a notice of appeal in the appropriate United States District Court, with notice simultaneously sent by certified mail to the Administrator of EPA and the Attorney General, pursuant to 40 C.F.R. § 22.45(c)(4)(viii). 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: _____

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In the matter of: ExxonMobil Joliet Refinery
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Certificate of Service

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2022-0003, which was filed on January 12, 2022, in the following manner to the following addressees:

Copy by e-mail to Respondent: Chris M. Carron
chris.m.carron@exxonmobil.com

Copy by e-mail to Attorney for Complainant: Matthew Russo
russo.matthew@epa.gov

Copy by e-mail to Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

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