



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

JAN 20 2015

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jonathon H. Sandoz
General Counsel
Consolidated Grain and Barge Co.
1127 Highway 190 East Service Drive
Covington, Louisiana 70433-4929

Re: Consolidated Grain and Barge Co., Mount Vernon, Indiana
Consent Agreement and Final Order – Docket No: **CWA-05-2015-0007**

Dear Mr. Sandoz:

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

January 20, 2015.

The civil penalty in the amount of \$20,000 is to be paid in the manner prescribed in paragraphs 38 through 41. Please be certain to reference your check and transmittal letter with the docket number. Your payment is due by *February 19, 2015.*

Please feel free to contact Ellen Riley at (312) 886-9497 if you have any questions regarding the enclosed document. Please direct any legal questions to John Stekete, Associate Regional Counsel, at (312) 886-0558. Thank you for your assistance in resolving this matter.

Sincerely yours,

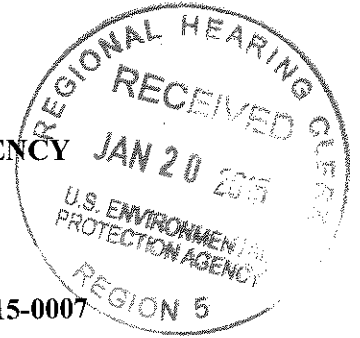
A handwritten signature in cursive script that reads "Lawrence Schmitt".

Lawrence Schmitt, Acting Chief
Enforcement and Compliance Branch

Enclosure

cc: Eric Boyd
Thompson Coburn LLP
55 East Monroe Street
Chicago, Illinois 60603

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:)

Consolidated Grain and Barge Co.,)
Mount Vernon, Indiana,)

Respondent.)
_____)

Docket No. CWA-05-2015-0007)
CWA SECTION 311 CLASS I)
CONSENT AGREEMENT)
AND FINAL ORDER)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 311(b)(6)(B)(ii) of the Clean Water Act (“Act”), 33 U.S.C. § 1321(b)(6)(B)(ii), 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 the Consolidated Grain and Barge Company, 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”). 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. 40 C.F.R. § 22.18(b)(2).

8. Respondent waives its right to request a hearing under Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), 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 a Final Order 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. 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 facilities and offshore facilities, and to contain such discharges. The authority to promulgate these regulations has been delegated to EPA.

11. 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 and requirements to prevent the discharge of oil from non-transportation-related facilities into or upon the navigable waters of the United States and adjoining shorelines. 40 C.F.R. § 112.1(a)(1).

12. 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 to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C).

13. The 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.*, which established certain procedures, methods, and requirements upon each owner and 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 (“harmful quantity”).

14. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), the EPA has determined that discharges of harmful quantities include oil discharges that cause either (1) a violation of applicable water quality standards, (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines, or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

15. 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare 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.

16. Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. § 19.4, authorizes the 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 \$11,000 per day for violations that occurred after March 15, 2004 through January 12, 2009, up to a maximum of \$157,500, and up to \$16,000 per day for violations that occurred after January 12, 2009, up to a maximum of \$177,500.

Factual Allegations and Alleged Violation

17. Respondent is a corporation organized under the laws of Louisiana with a place of business located at 2781 Bluff Road, Mount Vernon, Indiana. 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 premises ("the facility").

19. The facility's oil could reasonably be expected to flow and/or discharge directly into the Ohio River or via the McFadden Creek or Cypress Slough which are adjacent to the site.

20. The facility has an aggregate above-ground storage capacity, including the capacity of any bunkered or partially buried tank (as defined in 40 C.F.R. § 122.2), of greater than 1,320 gallons of oil in containers that each have a shell capacity of at least 55 gallons.

21. The facility has an aggregate above-ground storage capacity of 2,235,185 gallons of oil in containers that each have a shell capacity of at least 55 gallons.

22. The Ohio River is a navigable water 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).

23. The waters of the McFadden Creek flow into Cypress Slough which flows into the Ohio River.

24. The McFadden Creek and Cypress Slough 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).

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

26. 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.

27. 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.

28. 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”).

29. Respondent began operating the facility in November of 1997.

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

Factual Allegations and Alleged Violations

Count 1 (40 C.F.R. § 112.7 Plan Violations)

31. Paragraphs 1 through 30 above are hereby incorporated by reference.

32. On February 13, 2013, EPA inspected the facility and determined that Respondent had failed to adequately prepare, maintain and implement an SPCC plan for the facility.

33. Respondent’s failure to adequately prepare, maintain, and implement an SPCC plan for the facility violated applicable sections of 40 C.F.R. § 112.7.

34. As alleged in the preceding Paragraph, and pursuant to Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. § 19.4, the Respondent is liable for civil penalties of up to \$11,000 per day for violations that occurred after March 15, 2004 through January 12, 2009, up to a maximum of \$157,500, and up to \$16,000 per day for violations that occurred after January 12, 2009, up to a maximum of \$177,500.

Civil Penalty

35. 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, 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 \$20,000.

36. In developing the proposed settlement penalty for this CAFO, Complainant has taken into account the particular facts and circumstances of this case with specific reference to the relevant factors identified at Section 311(b)(8) of the Act. As required by Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), the Complainant, in determining the amount of the penalty, considered the seriousness of the violations, the economic benefit to the violator, the degree of culpability involved, any other penalty for the same violations, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

37. The penalty above represents a civil penalty assessed by the EPA and shall not be deductible for purposes of federal taxes.

Payment Terms

38. Based on the forgoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

No later than 30 days after the effective date of the Final Order, the Respondent shall pay the amount of \$20,000 by means of a cashier's or certified check, or by electronic funds

transfer (“EFT”). If paying by check, the 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
PO Box 979077
St. Louis, MO 63197-9000

If paying by EFT, the Respondent shall transfer \$20,000 to:

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

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

In the case of an international transfer of funds, the Respondent shall use SWIFT address FRNYUS33.

39. 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

Ellen M. Riley (SC-5J)
Chemical Emergency Preparedness
& Prevention Section
U.S. EPA, Region 5

77 West Jackson Blvd.
Chicago, IL 60604

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

40. Failure by the Respondent to pay the penalty assessed by the Final Order in full by its due date 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.

41. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, the EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

42. This CAFO constitutes a settlement by the EPA of all claims for civil penalties pursuant to Section 311(b) of the Act, 33 U.S.C. § 1321(b), for the violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to federal laws and regulations administered by the EPA.

43. Respondent, by entering into this agreement, certifies that its SPCC Plan is presently in compliance with 40 C.F.R. Part 112.

44. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

45. The Final Order 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. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in this CAFO.

46. 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.

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

48. Complainant reserves the right, pursuant to 40 C.F.R. 22.45(c)(4)(iii), to withdraw this CAFO within 15 days of receipt of a Commenter's petition requesting, pursuant to 40 C.F.R. § 22.45(c)(4)(ii), that the Regional Administrator set aside the CAFO on the basis of material evidence not considered.

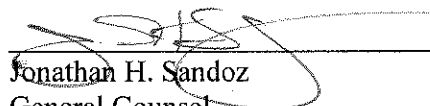
49. The undersigned representative of each Party to this CAFO certifies that he or she is duly authorized by the Party he or she represents to enter into the terms and bind that Party to them.

50. The Respondent and the EPA agree to the issuance and entry of the accompanying Final Order.

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

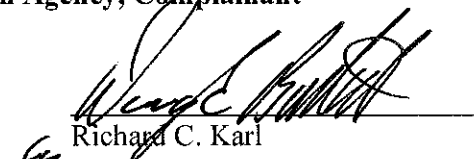
Consolidated Grain and Barge Co., Respondent

Date: 12/17/14


Jonathan H. Sandoz
General Counsel
Consolidated Grain and Barge Co.

U.S. Environmental Protection Agency, Complainant

Date: 1/14/2015


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

**In the Matter of: Consolidated Grain and Barge Co., Mount Vernon, Indiana,
Docket No. CWA-05-2015-0007**

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: 1-15-2015



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



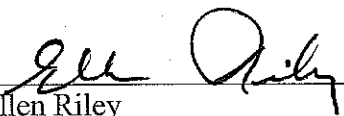
In the Matter of Consolidated Grain and Barge Co.
Docket No. CWA-05-2015-0007

Certificate of Service

I, Ellen Riley, 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:

Jonathon H. Sandoz
General Counsel
Consolidated Grain and Barge Co.
1127 Highway 190 East Service Road
Covington, Louisiana 70433-4929

on the 20th day of January, 2015



Ellen Riley
U.S. Environmental Protection Agency
Region 5

cc: John Steketee, ORC, EPA

Eric E. Boyd
Thompson Coburn LLP
55 East Monroe Street
Chicago, Illinois 60603