



JUL 26 2013

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

**Ridley USA Inc. d/b/a/
Hubbard Feeds, Inc.,
104 Oak Street,
Botkins, Ohio,**

Respondent.

Proceeding to Assess Class II Civil Penalty Under
Clean Water Act Section 311 for SPCC Violation
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. Respondent is Ridley USA Inc., d/b/a Hubbard Feeds Inc., Botkins, Ohio, a corporation doing business in the State of Ohio.

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)(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

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 Section 311(j)(1)(C)

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

12. The EPA subsequently promulgated the 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”).

13. 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.

14. 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.

15. 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 Violations

16. Paragraphs 1 through 15 above are hereby incorporated by reference.

17. Respondent is a corporation doing business in Ohio with a place of business located at 104 Oak Street, Botkins, Ohio. Respondent, therefore, 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. A storm sewer catch basin at the Facility drains to a drainage ditch south of the Facility, which empties to Loramie Creek. Loramie Creek flows into Lake Loramie, an impoundment of Loramie Creek, then south into the Great Miami River, which flows into the Ohio River.

20. The Facility has above-ground storage capacity greater than 1320 gallons of oil in containers each with a shell capacity of at least 55 gallons.

21. 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).

22. The waters of Loramie Creek flow into the Ohio River.

23. Loramie Creek is a tributary to the Ohio River.

24. Loramie Creek, therefore, 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).

25. Respondent is engaged in storing, transferring, 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 May 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.

31. 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.

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

32. Paragraphs 1 through 15 above are hereby incorporated by reference.

33. 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.

34. The Facility submitted its most current SPCC Plan to EPA November 30, 2012. EPA reviewed the Plan and determined that Respondent had failed to adequately prepare, maintain and implement such an SPCC plan for the facility.

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

36. 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.

Count 2 (Section 311(b)(3)) Spill Violation

37. Paragraphs 1 through 15 above are hereby incorporated by reference.

38. On or about July 12, 2010, Respondent discharged an estimated 3,927 gallons of soybean oil via a storm sewer to Loramie Creek.

39. The release of oil occurred when a clamped rubber hose connected to an oil storage tank came loose. The oil storage tank was located inside a building with secondary containment. With respect to this particular occurrence, the hose came loose in a manner that allowed the soybean oil to be discharged out a doorway into a storm sewer grate outside the building. Immediately after discovering this release, the Facility alerted local agencies and engaged a cleanup crew to recover as much material as possible.

40. Loramie Creek is a water body subject to the jurisdiction of Section 311 of the Act as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

41. Respondent's discharge of oil on or about June 12, 2010, from its facility caused a sheen upon the surface of the Loramie Creek.

42. Since Respondent's release of oil caused a sheen upon the surface of Loramie Creek, it was in a quantity that has been determined may be harmful under 40 C.F.R § 110.3, in violation of Section 311(b)(3) of the Act.

43. As alleged in the preceding Paragraph, and pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. § 19.4, the Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

Civil Penalty

44. The initial proposed civil penalty calculation provided in the EPA's January 25, 2013 Notice of Intent to File Letter was \$66,000 based on the EPA's "Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act" (dated August 1998).

45. The initial proposed civil penalty calculation was recalculated to a proposed civil penalty of \$59,868 after Respondent demonstrated to EPA that Respondent's Facility has a storage capacity of approximately 25,000 gallons, rather than approximately 50,000 gallons presumed by EPA.

46. In consideration of Respondent's culpability, Respondent's mitigation efforts, the duration and environmental impact of the alleged violations and additional litigation considerations, Complainant has determined that an appropriate civil penalty to settle this action is \$24,000.

47. 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.

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

Payment Terms

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

49. No later than thirty (30) days after the effective date of the Final Order, the Respondent shall pay the amount of Twenty Four Thousand Dollars and No Cents (\$24,000) 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 \$24,000 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.

50. 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

51. 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.

52. 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

53. 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.

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

55. The EPA states that it has provided a thirty (30) day opportunity for public notice and comment on this proposed CAFO pursuant to Section 311(b)(6)(C)(i) of the Act, 33 U.S.C. § 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45(b), and has not received any public comments.

56. 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.

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. 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.

60. 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.


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

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

Ridley, USA Inc., d/b/a Hubbard Feeds Inc., Respondent

CWA-05-2013-0017

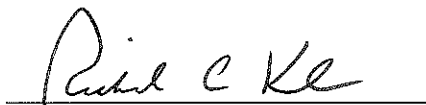
Date: July 19, 2013



Bruce Campbell
Corporate Secretary

U.S. Environmental Protection Agency, Complainant

Date: 7-24-13



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

In the Matter of: Ridley USA Inc., d/b/a "Hubbard Feeds Inc.," Botkins, Ohio
Docket No. CWA-05-2013-0017

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: _____

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