

FILED

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**U.S. EPA REGION 7
HEARING CLERK**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

BEFORE THE ADMINISTRATOR

In the Matter of

W2Fuel LLC,

Respondent

Proceedings under Section
311(b)(6)(B)(ii) of the Clean Water
Act, 33 U.S.C. § 1321(b)(6)(B)(ii)

)
) Docket No. CWA-07-2023-0056

)
) COMPLAINT AND
) CONSENT AGREEMENT /
) FINAL ORDER

I. PRELIMINARY STATEMENT

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 311(b)(6) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6), as amended by the Oil Pollution Act of 1990, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22.

2. This Complaint and Consent Agreement/Final Order (CAFO) serves as notice that the EPA has reason to believe that Respondent has violated Section 311 of the CWA, 33 U.S.C. § 1321, and regulations promulgated thereunder.

II. ALLEGATIONS

Jurisdiction

3. The authority to act under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, who in turn has delegated the authority under Section 311(b)(6) to the Director of the Enforcement and Compliance Division (Complainant).

Parties

4. Complainant and W2Fuel LLC., (Respondent), have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

Statutory and Regulatory Framework

5. The objective of the CWA, 33 U.S.C. § 1251 *et seq.*, is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

6. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides in part 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 to contain such discharges.

7. To implement Section 311(j)(1)(C), the EPA promulgated regulations to prevent oil pollution at 40 C.F.R. Part 112 that set forth the requirements for the preparation and implementation of Spill Prevention, Control, and Countermeasure (SPCC) Plans. The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore facilities with an aboveground storage capacity of 1,320 gallons or greater who are engaged in gathering, storing, transferring, distributing, using, or consuming oil or oil products which, due to their locations, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines.

Allegations of Fact and Conclusions of Law

8. Respondent is a limited liability company registered in the state of Iowa and engaged in the production of biodiesel (B90/B100) from soybean oil.

9. Respondent is a limited liability company, so is a person within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

10. At all times relevant to this action, Respondent was the owner and/or 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 the facility located in Crawfordsville, Iowa, FRS #/Oil Database ID: R7-IA-00312.

11. Respondent operates a biodiesel plant located at 3187 320th Street, Crawfordsville, Iowa 52621 (the Facility).

12. Respondent stores both biodiesel and soybean oil at the Facility.

13. The Facility’s total storage capacity is approximately 450,000 gallons.

14. The Facility contains an onsite retention pond. This retention pond overflows to a storm drain under Highway IA 27/US 218, which then flows to an unnamed creek to the East Fork of Crooked Creek.

15. Crooked Creek is a navigable water of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

16. The Facility is a “non-transportation-related” facility within the meaning of Appendix A of 40 C.F.R. § 112, as incorporated by reference within 40 C.F.R. § 112.2.

17. The Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

18. The Facility is 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 as defined by 40 C.F.R. § 110.3 and, therefore, is an SPCC-regulated facility.

19. Pursuant to Section 311(j)(1)(C) of the CWA, Executive Order 12777, and 40 C.F.R. § 112.1, Respondent, as the owner and/or operator of an SPCC-regulated facility, is and was subject to the SPCC regulations at all times relevant to this action. 40 C.F.R. § 112.7(a)(2) requires the owner and/or operator of a SPCC regulated facility to “comply with all applicable requirements” of 40 C.F.R. Part 112. The SPCC requirements for facilities that store “animal, fats, and vegetable oils” (AFVO) are set forth at 40 C.F.R. § 112.12.

20. On August 6, 2021, a 75-gallon spill occurred at the Facility that resulted in oil being discharged to an onsite stormwater retention pond.

21. On August 19, 2021, representatives of the EPA inspected the facility to determine compliance with the SPCC regulations of 40 C.F.R. Part 112. A copy of this inspection report was transmitted to Respondent on or about October 5, 2021.

Allegations of Violation

Failure to Fully Prepare and Implement an SPCC Plan

22. 40 C.F.R § 112.3 requires Respondent to fully prepare and implement an SPCC plan. As part of implementing the SPCC plan, Respondent is required to perform routine checks and maintenance on all SPCC regulated facilities to maintain compliance with the CWA.

23. EPA’s August 19, 2021, inspection documented Respondent’s failure to fully implement an SPCC Plan (Plan) at the Facility.

24. Respondent’s errors and omissions at the Facility included the following:

- a. The Plan states that spills are cleaned up promptly and the monthly inspection log would capture calls for recording staining in various areas throughout the Facility. The Facility was in operation at the time of the inspection and Facility personnel were still working to address issues caused by the August 6, 2021, oil spill. Oil stains were found on the facility floors throughout the facility process and loading/unloading areas, in violation of 40 C.F.R. § 112.7.
- b. The SPCC Plan indicates floor drains in the facility were reported to be plugged. At the time of the spill, the floor drains were not plugged, in violation of 40 C.F.R. § 112.7.

c. The facility failed to implement the discharge prevention measures in the SPCC Plan, specifically the procedures for the routine handling of products. At the time of the inspection, the facility's roll-up doors were open, and the transfer area still contained oil from the spill event that occurred on August 6, 2021, in violation of 40 C.F.R. § 112.3 and 112.7.

d. The facility failed to provide adequate secondary containment. The controls described in the SPCC Plan to contain a discharge do not include a provision that spills would be contained by a retention pond. The Plan states the drain plugs provide containment when the overhead roll-up doors are secured closed. The doors were open on the date of the inspection. Floor drains were not plugged and were piped to the retention pond, in violation of 112.7(c).

e. Respondent failed to provide properly sized secondary containment for the bulk storage tanks and process tanks located inside the facility. Rollup doors were open and drains were not plugged, as required by the SPCC Plan. The discharge occurred from the oil-filled operational equipment in the production area. The Respondent failed to construct all bulk storage tank installations with adequate secondary containment, in violation of 40 C.F.R. §112.12(c)(2).

f. Respondent failed to regularly inspect all aboveground valves, piping, and appurtenances in violation of 40 C.F.R. §112.12(d)(4).

III. Consent Agreement

General Provisions

25. Respondent and the EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of this CAFO.

26. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal any portion of this CAFO.

27. Respondent and Complainant agree to bear their own costs and attorney's fees incurred as a result of this action.

28. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a civil penalty of \$54,900, as set forth in the Penalty section below.

29. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

30. Respondent neither admits nor denies the factual allegations asserted above by the EPA.

31. Respondent certifies by the signing of this CAFO that Respondent is in compliance with the CWA.

32. The effect of settlement is conditional upon the accuracy of the Respondent's representations to the EPA in this CAFO.

Reservation of Rights

33. This CAFO addresses all civil and administrative claims for the CWA violations alleged above. With respect to matters not addressed in this CAFO, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

34. Nothing contained in this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

35. Notwithstanding any other provision of this CAFO, the EPA reserves the right to enforce the terms of this CAFO by initiating a judicial or administrative action pursuant to Section 311 of the CWA, 33 U.S.C. § 1321, and to seek penalties against Respondent or to seek any other remedy allowed by law.

Penalty

36. Respondent agrees to pay a civil penalty of **Fifty-Four Thousand Nine Hundred Dollars (\$54,900)** pursuant to the authority of Section 311 of the CWA, 33 U.S.C. § 1321, within thirty (30) days of the Effective Date of this CAFO.

37. The payment of penalties must reference docket number CWA-07-2023-0056 and be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

38. Copies of the checks or verification of another payment method for the penalty payments remitted shall be emailed to:

Anna R. Landis
Attorney Advisor
U.S. Environmental Protection Agency Region 7
landis.anna@epa.gov

and

Regional Hearing Clerk
U.S. Environmental Protection Agency Region 7
r7_hearing_clerk_filings@epa.gov.

39. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

40. Respondent understands that its failure to timely pay any portion of the civil penalty described herein may result in the commencement of a civil action in the United States District Court for the Southern District of Iowa to recover the full remaining balance, along with penalties and accumulated interest.

41. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Signatories

42. The undersigned for each party have the authority to bind each respective party to the terms and conditions of this CAFO. The CAFO may be signed in part and counterpart by each party.

Parties Bound

43. This CAFO shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

Executed Agreement Filed

44. This executed Complaint and CAFO shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Electronic Service

45. Respondent consents to receiving the filed CAFO electronically at the following email address: *agibson@w2fuel.com.*

For the Respondent, W2Fuels LLC:

Signature: 

Date: 4/12/23

Name: Michael W. Noble

Title: General Manager

For the Complainant, U.S. Environmental Protection Agency Region 7:

David Cozad
Director
Enforcement and Compliance Assurance Division

Anna R. Landis
Attorney-Advisor
Office of Regional Counsel

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date

Karina Borromeo
Regional Judicial Officer

Certificate of Service

I certify that on the date noted below I delivered a true and correct copy of this Consent Agreement and Final Order by electronic mail, to:

For Complainant:

Anna R. Landis
Office of Regional Counsel
U.S. Environmental Protection Agency Region 7
landis.anna@epa.gov

Mark Aaron
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 7
aaron.mark@epa.gov

For Respondent:

Corporation Service Company
505 5th Avenue, Suite 729
Des Moines, Iowa 50309

John Lang
Plant Manager
3187 320th Street
Crawfordsville, Iowa 52621
agibson@w2fuel.com

Date

Signature