

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:	)	Docket No. CWA-05-2013-0015
	)	
ROWELL CHEMICAL	)	Proceeding to Assess a Class II Civil
CORPORATION	)	Penalty Under Section 309(g) of the
10100 S. Archer Ave.	)	Clean Water Act, 33 U.S.C. §1319(g)
Willow Springs, Illinois.	)	
	)	
RESPONDENT	)	
_____	)	

RECEIVED  
JUL 17 2013  
REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under section 309(g) of the Clean Water Act (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* (the Consolidated Rules), codified at 40 C.F.R. part 22.
2. Complainant is the Director of the Water Division, U.S. Environmental Protection Agency, Region 5 ("EPA").
3. Respondent is Rowell Chemical Corporation (Respondent), the owner and operator of a Non-Publicly-Owned Treatment Works plant at 10100 S. Archer, Willow Springs, Illinois.
4. Federal regulations, at 40 C.F.R. § 22.13(b), provide that 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).
5. EPA and Respondent agree that the settlement of this matter pursuant to 40 C.F.R. § 22.13(b) is in the public interest and that the entry of this CAFO without engaging in litigation is the most efficient means of resolving this matter.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. For the purposes of this proceeding, and pursuant to 40 C.F.R. § 22.18(b) and (c), Respondent: (a) admits that EPA has jurisdiction over the subject matter set forth in this CAFO; and (b) neither admits nor denies the facts set forth in this CAFO.
8. For purposes only of the allegations and agreements made herein, upon execution of this CAFO, Respondent waives all rights to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO, including, but not limited to, its right to request a hearing under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and its right to appellate review of the CAFO found at Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).

### **Statutory and Regulatory Background**

9. To restore and maintain the integrity of the nation's water, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into navigable waters of the United States by any person, except in compliance with, inter alia, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
10. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the NPDES program under which EPA and, upon receiving authorization from EPA, a state, may permit discharges into navigable waters, subject to specific terms and conditions.
11. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2 define the term "pollutant" to mean, inter alia, solid waste, sewage, garbage, sewage sludge, biological materials, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.
12. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2 define the term "discharge of pollutant" to mean any addition of any pollutant to navigable waters from any point source.
13. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term "navigable waters" to mean the waters of the United States.
14. 40 C.F.R. § 122.2 defines "waters of the United States" to include all waters which are, were or may be used in interstate or foreign commerce, including tributaries and wetlands.
15. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a Class II civil penalty under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), after consultation with the State, when the Administrator finds, on the basis of any information available, that a person has violated Section 301 of the CWA, 33 U.S.C. § 1311, or has violated any permit condition or limitation implementing a permit issued under section 402 of the CWA, 33 U.S.C. § 1342.

### **General Allegations**

16. Respondent owns and operates a Non-Publicly-Owned Treatment Works (POTW) plant at 10100 S. Archer in Willow Springs, Illinois.
17. Respondent is a "person" as that term is defined in Section 502(5) of the Act, 33 U.S.C. § 1362(5).
18. Respondent discharges wastewater from its facility through Outfall 001 to the Chicago Sanitary and Ship Canal which discharges into the Des Plaines River.
19. Outfall 001 is a "point source" as that term is defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14).
20. The Des Plaines River is a "navigable water" as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7).
21. The wastewater discharged by Respondent contains, inter alia, iron and suspended solids which are "pollutants" as that term is defined in Section 502(6) of the Act, 33 U.S.C. § 1362(6).
22. Pursuant to Section 402(b) of the CWA, 33 U.S.C § 1342(b), the Administrator of the EPA, on October 23, 1977, approved a program whereby the State of Illinois, through the Illinois Environmental Protection Agency ("IEPA"), was authorized to issue and administer NPDES permits as set forth in the CWA and in the Memorandum of Agreement between EPA and the IEPA dated May 12, 1977. EPA retains independent authority to enforce the CWA in Illinois, including enforcing the conditions of NPDES permits issued by IEPA.
23. On November 10, 2009, the IEPA issued NPDES permit no. IL0066613 (the permit) to Respondent.
24. The permit became effective on December 1, 2009 and has an expiration date of November 30, 2014.
25. The permit authorizes the Respondent to discharge pollutants through Outfall 001 from its non-POTW to the Chicago Sanitary and Ship Canal which discharges into the Des Plaines River, subject to the terms and conditions set forth in the permit pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The permit contains effluent limitations on the amount of Total Suspended Solids, Total Iron and Biochemical Oxygen Demand that Respondent may discharge from Outfall 001.

### **Violations - Discharges in Excess of Permit Limits**

26. On numerous occasions from June 2010 to June 2011, Respondent discharged pollutants from Outfall 001 to the Chicago Sanitary and Ship Canal, which discharges into the Des Plaines River, in amounts that exceeded the effluent limitations in the permit for daily maximum limits and

monthly average limits of Total Suspended Solids, Total Iron and Biochemical Oxygen Demand.

27. Respondent's discharges of pollutants in excess of the amounts authorized by its permit constitute violations of the permit and of Section 301(a) of the Act, 33 U.S.C. § 1311(a).
28. Complainant alleges that according to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, Respondent's violations of Section 402 of the CWA, 33 U.S.C. § 1342, subject Respondent to civil penalties not to exceed \$16,000 per day of violation and a maximum of \$177,500.

**Terms of Settlement**  
**Assessment and Payment of Penalty**

29. Pursuant to section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), Complainant determined that an appropriate civil penalty to settle this action is \$36,300. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and, with respect to Respondent, ability to pay, history of violations, degree of culpability, economic benefit resulting from the violations and any other factors justice may require.
30. Within 45 days after the effective date of this CAFO, Respondent must pay the \$36,300 civil penalty for the CWA violations by sending a check, payable to the "Treasurer, United States of America," to:

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

The check must state the docket number of this CAFO, and any assigned billing document number, discussed below.

31. This civil penalty is not deductible for federal tax purposes.
32. A transmittal letter, stating Respondent's name, complete address, and the case docket number must accompany the payment. Respondent shall simultaneously and separately send notice of such payment, including a copy of the check, to each of the following three persons at the address indicated:

Regional Hearing Clerk  
Mail Code (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Peter Felitti  
Associate Regional Counsel  
Office of Regional Counsel (C-14J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Sangsook Choi  
Enforcement & Compliance Assurance Branch (WC-15J)  
Water Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

33. Respondent's failure to pay the assessed civil penalty in accordance with the provisions of this CAFO may result in the referral of this matter to the United States Department of Justice for collection in accordance with Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.
34. 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 payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

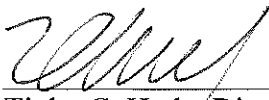
#### **Other Matters**


35. This CAFO constitutes a complete and full settlement of claims, and resolves the liability for federal civil penalties of the Respondent and its officers, directors and employees, arising out of the violations alleged in the CAFO.
36. Nothing in this CAFO relieves Respondent of the duty to comply with the CWA or other federal, state or local laws or statutes.
37. Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of Respondent arising from the violations alleged in this CAFO. Notwithstanding any other provision of this CAFO, EPA expressly reserves any and all rights to bring an enforcement action pursuant to the Section 504 of the CWA, 33 U.S.C. § 1364, or other statutory authority should EPA find that the Site is presenting an imminent and substantial endangerment to the health or welfare of persons. EPA also expressly reserves the right: (a) to take any action authorized under Section 309 of the CWA for any matters other than the violations alleged in this CAFO; and (b) to enforce compliance with this CAFO.
38. This CAFO binds both parties, their officers, directors, employees, successors, and assigns to this action. The representative of each party signing this CAFO certifies that he or she has authority

to enter into the terms of this CAFO and bind that party to it. Respondent shall give notice and a copy of this CAFO to any successor in interest prior to any transfer of ownership or operational control of the Site.

- 39. Each party agrees to bear its own costs accrued in the course of this action.
- 40. Pursuant to 40 C.F.R. § 22.38, the State of Illinois was notified of this proceeding and the other terms of this settlement.
- 41. The effective date of this CAFO is thirty (30) days after the date that the CAFO is filed in the office of the Regional Hearing Clerk, after having been signed by the Regional Administrator or her designated representative and subjected to the requirements of Section 309(g)(4)(C) and (5) of the CWA, 33 U.S.C. § 1319(g)(4)(C) and (5).
- 42. This CAFO constitutes the entire agreement between the parties.
- 43. The information required to be maintained or submitted pursuant to this CAFO is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 et seq.

*DEAN MARANO, ACTING FOR T.H.*

  
\_\_\_\_\_  
Tinka G. Hyde, Director      7/17/13  
Water Division                      Date  
U.S. Environmental Protection Agency  
Region 5

  
\_\_\_\_\_  
Kyle Kohlhaas                      7/8/13  
Vice President of Operations      Date  
Rowell Chemical Corporation

In the Matter of:  
Rowell Chemical Corporation  
Docket No. **CWA-05-2013-0015**

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. 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  
United States Environmental Protection Agency  
Region 5