

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Caterpillar, Inc.
Joliet, Illinois

Respondent.

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U.S. ENVIRONMENTAL
PROTECTION AGENCY

Proceeding to Assess Class II
Civil Penalty Under Section 311
of the Clean Water Act,
33 U.S.C. § 1321

DOCKET NO. : CWA-05-2011-0006

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This is an administrative action commenced and concluded under Section 311(b)(6) of the Clean Water Act (the Act), 33 U.S.C. § 1321(b)(6), 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, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.
3. Respondent is Caterpillar, Inc. (Caterpillar), a Delaware corporation doing business in the State of Illinois with a facility located at 2200 Channahon Road, Joliet, Illinois (facility or Joliet facility).
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).

II. JURISDICTION AND WAIVER OF RIGHT TO HEARING

5. U.S. EPA alleges that Respondent failed to comply with the Spill Prevention, Control and Countermeasures (SPCC) regulations set forth at 40 C.F.R. Part 112 under the authority of Section 311(j) of the Clean Water Act, 33 U.S.C. § 1321(j), and that Respondent discharged a quantity of oil to the Des Plaines River in excess of amounts allowed pursuant to Section 311(b) of the Clean Water Act, 33 U.S.C. § 1321(b), and 40 C.F.R. Part 110.

6. Jurisdiction for this action is conferred upon U.S. EPA by Section 311(b)(3), (b)(6), (b)(7) and (j) of the Act, 33 U.S.C. § 1321(b)(3), (b)(6), (b)(7) and (j).

7. 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.

III. STATUTORY AND REGULATORY BACKGROUND

8. Section 311(b)(3) of the Act, 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.

9. The regulation at 40 C.F.R. § 110.3 specifies the quantity of oil that may be harmful to the public health or welfare or environment of the United States. The quantity of oil includes discharges of oil that cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines.

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 and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges."

11. The regulations at 40 C.F.R. Part 112 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. The regulated facilities include those that drill for, produce, gather, store, process, refine, transfer, distribute or consume oil or oil products.

IV. GENERAL ALLEGATIONS

12. Caterpillar is a "person" within the meaning of Sections 311(a)(7) and 502(5) of the Act, and 40 C.F.R. § 112.2.

13. The Joliet facility is an "onshore facility" within the meaning of Section 311(a)(10) of the Act, and 40 C.F.R. § 112.2.

14. Caterpillar is an "owner or operator" within the meaning of Section 311(a)(6) of the Act, and 40 C.F.R. § 112.2.

15. The Des Plaines River is a navigable water of the United States as defined in Section 502(7) of the Act, and 40 C.F.R. § 110.1.

16. The Joliet facility is a non-transportation-related on-shore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shoreline.

17. The Joliet facility has an aboveground storage capacity of more than 1,320 gallons.

18. Caterpillar is engaged in the storage and consumption of oil or oil products at the facility.

19. Caterpillar is an owner or operator of an SPCC-regulated facility. The Joliet facility is subject to the SPCC regulations found at 40 C.F.R. § 112.2 and 40 C.F.R. Part 112, Appendix A.

V. SPECIFIC ALLEGATIONS

20. The allegations in paragraphs 1 through 19, above, are incorporated by reference.

21. On or about February 8, 2009, Caterpillar discovered and reported a release of wastewater containing 2.6% oil from the wastewater treatment system located at its Joliet facility.

22. Caterpillar estimates that it released approximately 3,000 – 3,250 gallons of wastewater to the Des Plaines River and caused a sheen of oil on the Des Plaines River.

23. On or about February 8, 2009, Caterpillar shut down equipment causing the release, contained and collected the released liquids, and removed contaminated surface soils in the area. Caterpillar completed the removal of released liquids by the end of that week.

24. The discharge of wastewater with oil on February 8, 2009, from Caterpillar's Joliet facility into or upon the Des Plaines River and its adjoining shorelines was in a quantity in excess of that allowed by 40 C.F.R. Part 110 and therefore was a violation of Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

25. On or about February 11 and July 1, 2009, EPA inspected the Caterpillar Joliet facility to review its SPCC Plan and to determine its compliance with the SPCC regulations found at 40 C.F.R. Part 112.

26. On or about March 5, 2009, and January 21, 2010, EPA sent Caterpillar letters identifying deficiencies in its SPCC Plan for the Joliet facility. Caterpillar submitted revised SPCC Plans and other related information to EPA on or about April 3, April 9 and May 8, 2009,

and June 25, 2010. Caterpillar and EPA also discussed these letters in a number of meetings and conference calls.

27. Caterpillar's Joliet facility did not comply with 40 C.F.R. Part 112 on or about March 5, 2009, and for a period of time preceding and following that date. Consequently, Caterpillar was in violation of Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6).

VI. CONSENT AGREEMENT

28. U.S. EPA and Respondent agree that the above matter constitutes a disputed claim; that settlement of the above matter is in the public interest; and that entry of this CAFO without litigation is the most appropriate means of resolving this matter. Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties to this action, the parties hereby stipulate as follows in subsequent paragraphs.

29. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

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

31. Respondent admits to the jurisdictional allegations in this CAFO.

32. Respondent neither admits nor denies the specific factual allegations in this CAFO.

33. Respondent waives the right to a hearing under Section 311(b)(6)(B)(ii) and (e) of the Act, 33 U.S.C. §1321(b)(6)(B)(ii) and (e), and to appeal any Final Order in this matter under Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(G)(ii). Respondent consents to the issuance of a Final Order without further adjudication.

34. Complainant proposes and Respondent consents to the assessment of a civil penalty of NINETY THOUSAND DOLLARS (\$90,000) to be paid within 30 days of the effective date of the Final Order. Respondent agrees to pay by a cashier's or certified check, or by an electronic funds transfer (EFT). Respondent must reference the title and docket number of the action ("In the Matter of Caterpillar, Inc. – Joliet facility – Docket No. CWA-05-2011-0006) and "Oil Spill Liability Trust Fund - 311" on the payment.

35. If Respondent pays by check, make it payable to "Environmental Protection Agency," noting on the check "OSTLF-311" and docket number _____. Send the payment to "U.S. Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, PO Box 979077, St. Louis, Mo. 63197-9000."

36. If Respondent pays by Electronic Funds Transfer ("EFT"), it must instruct its agent to transfer funds payable to "Treasurer, United States of America" and directed to "Federal Reserve Bank of New York, ABA 021030004, Account 68010727, SWIFT address FRNYUS33, 33 Liberty Street, New York, NY 10045." Field Tag 4200 of the EFT message shall read "D 68010727 Environmental Protection Agency." (In the case of an international transfer of funds, use the SWIFT address FRNYUS33.) In the comment or description field of the EFT state the case title, the docket number of this CAFO and the billing document number.

37. If Respondent pays by ACH, also known as REX or remittance express, the amount is payable to the "Treasurer, United States of America and sent to "U.S. Treasury REX/Cashlink ACH Receiver, ABA: 051036706, Account Number: 310006, Environmental Protection Agency, CTX Format Transaction Code 22.

38. If Respondent pays on line go to WWW.PAY.GOV , use the Search Public Forms option and enter “1.1” in the search public forms field. Open the form and complete the required fields.

39. Pursuant to 40 CFR § 22.18(a)(1), Respondent must file a copy of its check with the Regional Hearing Clerk at the address provided below. For EFT transfers, Respondent must instead file a copy of its EFT confirmation with the Regional Hearing Clerk. In either case, Respondent shall simultaneously send a copy of the check or EFT confirmation to:

Regional Hearing Clerk (RHC)
U.S. Environmental Protection Agency
Region 5
77 W. Jackson, (E-19J)
Chicago, Illinois 60604

Dr. Barbara Carr
U.S. Environmental Protection Agency
Region 5
Superfund Division
77 W. Jackson, (SC-5J)
Chicago, Illinois 60604

Richard J. Clarizio
U.S. Environmental Protection Agency
Region 5
Office of Regional Counsel
77 W. Jackson, (C-14J)
Chicago, Illinois 60604

40. 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, 33 U.S.C. § 1321(b)(8).

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

General Provisions

42. Failure of the Respondent to pay on a timely basis the amount of an assessed penalty in full may subject the Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists 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 shall not be subject to review.

43. Respondent shall pay a late payment handling charge of \$15.00 on any late payment, with an additional charge of \$15.00 for each subsequent 30 calendar day period over which an unpaid balance remains.

44. On any portion of a civil penalty more than 90 calendar days past due, Respondent shall pay a non-payment penalty of six percent per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to the charges which accrue or may accrue under paragraphs 42 or 43 above.

45. This CAFO constitutes a settlement by U.S. 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 for any other alleged violation of the federal laws and regulations administered by U.S. EPA.

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

47. U.S. EPA states that it has provided a thirty 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.

48. 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 there under, 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 stipulated to herein.

49. If Respondent fails to comply with this CAFO, Respondent waives any rights it may possess in law or equity to challenge the authority of U.S. 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.

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

51. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with, or to be served with and reply to, any memorandum or communication with a U.S. EPA official identified in 40 C.F.R. § 22.08 where the purpose of the discussion, memorandum or communication is to persuade that official to accept and issue this CAFO.

52. 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.

53. 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.

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

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

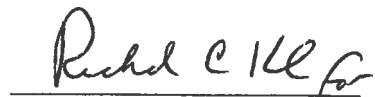
56. This CAFO terminates when U.S. EPA determines that the Respondent has fully complied with the terms and conditions of this CAFO.

Agreed to this _____ day of _____, 2011.



Timothy Flaherty
General Manager
Caterpillar

4/25/2011
Date



Douglas E. Ballotti, Acting Director
Superfund Division
U.S. Environmental Protection Agency
Region 5
Chicago, Illinois 60604-3511

5-12-11
Date

FINAL ORDER

Pursuant to Section 311(b)(6) of the Act, 33 U.S.C. §1321(b)(6), and the delegated authority of the undersigned, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," codified at 40 CFR Part 22, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order and the Allegations by the Complainant are adopted as Findings in this Final Order.

The Respondent is ordered to comply with the terms of the Consent Agreement.

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

U.S. ENVIRONMENTAL
PROTECTION AGENCY
APR 27 2011
OFFICE OF REGIONAL
COUNSEL