



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

FEB 10 2015

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

John B. Kavanaugh  
Secretary/Treasurer  
Emulsions, Inc.  
1104 Adams Street  
Lawrenceville, Illinois

Re: Emulsions, Inc. – Lawrenceville, Illinois  
Consent Agreement and Final Order – Docket No: **CWA-05-2015-0005**

Dear Mr. Kavanaugh:

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

*February 10, 2015.*

The civil penalty in the amount of \$26,238, is to be paid in the manner prescribed in paragraphs 52 through 57. Please be certain to reference your check and transmittal letter with docket number **CWA-05-2015-0005**. Your payment is due by *March 12, 2015*. The Supplemental Environmental Project must be completed in the manner as described in paragraphs 58 through 77.

Please feel free to contact Joseph Ulfig at (312) 353-8205 if you have any questions regarding the enclosed document. Please direct any legal questions to Robert M. Peachey, Associate Regional Counsel, at (312) 886-0273. Thank you for your assistance in resolving this matter.

Sincerely yours,

Lawrence Schmitt  
Acting Chief  
Enforcement and Compliance Branch

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

In the Matter of: )  
)  
)  
**Emulsions, Inc.** )  
**1104 Adams Street** )  
**Lawrenceville, Illinois,** )  
)  
**Respondent.** )

---

**Docket No. CWA-05-2015-0005**

**Proceeding to Assess a Class II Civil  
Penalty under Section 311(b)(6)(B)(ii) of  
the Clean Water Act, 33 U.S.C.  
§ 1321(b)(6)(B)(ii)**



**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. §§ 22.13(b) and 22.18(b)(2).
2. The Complainant is, by lawful delegation, the Director of the Superfund Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Emulsions, Inc. (Emulsions), a corporation doing business in the State of Illinois.
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 Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), 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 this CAFO without further adjudication.

**Statutory and Regulatory Background**

9. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President of the United States 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....”

10. Section 311(j)(5)(A)(i) and (C)(iv) of the Act, 33 U.S.C. § 1321(j)(5)(A)(i) and (C)(iv), states that the President shall issue regulations requiring the owner or operator of “an onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or upon the navigable waters of the United States [or] adjoining shorelines” to “submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such discharge, of oil.”

11. Initially by Executive Order 11,548 (July 20, 1970), 35 Fed. Reg. 11,677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12,777 (Oct. 18, 1991), 56 Fed.

Reg. 54757 (Oct. 22, 1991), the President delegated to the EPA his authority under Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), to issue the regulations referenced in the preceding paragraph for non-transportation-related onshore facilities.

12. EPA subsequently promulgated regulations, codified at 40 C.F.R. Part 112, Subparts A, B, C, and D, also known as the Spill Prevention, Control, and Countermeasure (SPCC) and Facility Response Plan (FRP) regulations, pursuant to its authorities under the Act, 33 U.S.C. § 1251 *et seq.*

13. 40 C.F.R. § 112.3 requires owners or operators of facilities subject to 40 C.F.R. Part 112 to prepare in writing and implement a Spill Prevention, Control and Countermeasure Plan (“SPCC Plan” or “Plan”).

14. 40 C.F.R. § 112.7(a)(1) requires owners or operators of facilities subject to 40 C.F.R. Part 112 to include a discussion of their facility’s conformance with the requirements listed in this part.

15. 40 C.F.R. § 112.8(a) requires owners or operators of facilities subject to 40 C.F.R. Part 112 to meet the general requirements for the Plan listed under 40 C.F.R. § 112.7.

16. 40 C.F.R. § 112.20(a)(1) states, in part, that the owner or operator of a FRP-regulated facility that commenced operations prior to February 18, 1993, must submit a FRP that satisfies the requirements of 40 C.F.R. § 112.20 and 33 U.S.C. § 1321(j)(5) no later than August 30, 1994.

17. 40 C.F.R. § 112.20(f)(1) states, in part, that a facility could, because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or on navigable waters or adjoining shorelines, if it meets the criteria of either 40 C.F.R.

§ 112.20(f)(1)(i) or 112.20(f)(1)(ii), as applied in accordance with the flowchart contained in Attachment C-1 to Appendix C of 40 C.F.R. Part 112.

18. 40 C.F.R. § 112.20(f)(1)(ii) is applicable if a facility has a total oil storage capacity greater than or equal to one (1) million gallons, and if any one of four subsections (i.e. 40 C.F.R. § 112.20(f)(1)(ii)(A) through (D)), is true.

19. 40 C.F.R. § 112.20(f)(1)(ii)(A) is applicable if the facility does not have secondary containment for each aboveground oil storage area sufficiently large to contain the capacity of the largest aboveground oil storage tank within each storage area plus sufficient freeboard to allow for precipitation.

20. 40 C.F.R. § 112.20(f)(1)(ii)(B) is applicable if a facility is located at a distance (as calculated using the appropriate formula in Appendix C to 40 C.F.R. Part 112 or a comparable formula) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments.

21. 40 C.F.R. § 112.7(b) provides that where experience indicates a reasonable potential for equipment failure, the Plan must include a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure.

22. 40 C.F.R. § 112.7(g) requires that owners or operators describe in their Plans how they secure and control access to the oil handling, processing and storage areas; secure master flow and drain valves; prevent unauthorized access to starter controls on oil pumps; and secure out-of-service and loading/unloading connections of oil pipelines.

23. 40 C.F.R. § 112.7(k) requires that the owner or operators of facilities with oil-

filled operational equipment provide secondary containment for this equipment pursuant to 40 C.F.R. § 112.7(c), or undertake the alternate requirements of 40 C.F.R. § 112.7(k)(2), if qualified.

24. 40 C.F.R. § 112.8(b)(2) requires that, if a facility drainage drains directly into a watercourse and not into an on-site wastewater treatment plant, retained stormwater be inspected and drained as provided in 40 C.F.R. § 112.8(c)(3)(ii), (iii), and (iv).

25. 40 C.F.R. § 112.8(c)(3)(iv) requires that adequate records of discharges be kept for drainage of uncontaminated rainwater from a diked area into a storm drain or for discharge of an effluent into an open watercourse, lake, or pond, bypassing the facility treatment system.

26. 40 C.F.R. § 112.8(c)(6) requires, among other things, that the owner or operator of an onshore facility test each aboveground container for integrity on a regular schedule, and whenever material repairs are made. The SPCC Plan must include: the appropriate qualifications for personnel performing tests and inspections; the frequency and type of testing and inspections, which take into account container size, configuration, and design; as well as the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas.

27. 40 C.F.R. § 112.8(d)(1) requires that buried piping installed or replaced on or after August 16, 2002 has protective wrapping or coating, and is cathodically protected or otherwise satisfies corrosion protection standards for piping in 40 C.F.R. Part 280 or 281. It also requires that buried piping exposed for any reason is inspected for deterioration; corrosion damage is examined; and corrective action is taken.

28. 40 C.F.R. § 112.20(a)(1) requires the owner or operators of facilities subject to 40 C.F.R. Part 112, Subpart D, that were in operation on or before February 18, 1993, to prepare

and submit a facility response plan that satisfies the requirements of 33 U.S.C. § 1321(j)(5) no later than February 18, 1995.

29. 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, authorize EPA to assess a civil penalty for violations of the FRP and SPCC regulations promulgated pursuant to Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), of 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**

30. Respondent is a corporation organized under the laws of Indiana with a place of business located at 1104 Adams Street, Lawrenceville, Illinois. 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.

31. 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").

32. The facility is an asphalt blending and storage terminal with a storage capacity of approximately 1.98 million gallons, in containers each with a shell capacity of at least 55 gallons.

33. The facility's oil, in the event of a discharge, could reasonably be expected to flow and/or discharge to the Embarras River and associated wildlife and sensitive wetland areas, either along the topography or through a storm sewer located within the grounds of the facility.

34. The Embarras 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).

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

36. 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.

37. 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.

38. 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, and therefore, is “an SPCC-regulated facility”.

39. The facility is a non-transportation related, onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the United States or adjoining shorelines, within the meaning of Section 311(j)(5) of the Act, 33 U.S.C § 1321(j)(5), and 40 C.F.R. § 112.20(f)(1) and, therefore, is an “FRP-regulated facility.”

40. Operations at the facility commenced in 1934.

41. In August 2013, EPA sent Emulsions an Information Request regarding the facility, and its conformance with the SPCC and FRP regulations. Emulsions responded to this information request, providing information about the facility.

42. Respondent, as the owner and operator of an SPCC and FRP-regulated facility, is subject to the SPCC and FRP regulations.



43. The SPCC Plan provided by Emulsions did not include a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure, in violation of 40 C.F.R. § 112.7(b).

44. The SPCC Plan provided by Emulsions did not describe how the master flow and drain valves and the oil handling, processing and storage areas are secured, how unauthorized access to starter controls on the oil pumps is prevented, or how out-of-service and loading/unloading connections of oil pipelines are secured, in violation of 40 C.F.R. § 112.7(g) and 40 C.F.R. § 112.7(a)(1).

45. The SPCC Plan provided by Emulsions did not address the facility's conformance with either method of compliance for its oil-filled operational equipment, in violation of 40 C.F.R. §§ 112.7(c) or 112.7(k), and 40 C.F.R. § 112.7(a)(1).

46. The SPCC Plan provided by Emulsions did not describe where discharged storm water is ultimately discharged after it is placed outside the containment area, in violation of 40 C.F.R. § 112.8(b)(2) and 40 C.F.R. § 112.8(a).

47. The SPCC Plan provided by Emulsions did not address the creation or maintenance of records for drainage of uncontaminated rainwater from a diked area into a storm drain or for discharge of an effluent into an open watercourse, lake, or pond, in violation of 40 C.F.R. § 112.8(c)(3)(iv) and 40 C.F.R. § 112.8(a).

48. The SPCC Plan provided by Emulsions did not address all of the required information related to integrity testing of each aboveground container in accordance with industry standards, in violation of 40 C.F.R. § 112.8(c)(6) and 40 C.F.R. § 112.8(a).

49. The SPCC Plan provided by Emulsions did not describe its conformance with the requirements for buried piping, in violation of 40 C.F.R. § 112.8(d)(1) and 40 C.F.R. § 112.8(a).

50. Communication with representatives of Emulsions following the August 2013 Request for Information confirms that no prior version of a FRP was in existence prior to the September 11, 2013, revision submitted by Emulsions in response to the Request for Information, despite the facility being in operation since 1934. This is a violation of Section 311(j)(5) of the Act, 33 U.S.C. § 1321(j)(5), and 40 C.F.R. § 112.20(a)(1).

51. As alleged in the preceding paragraphs, 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, Respondent is liable for civil penalties of up to \$16,000 per day for violations that occurred after January 12, 2009, up to a maximum of \$177,500.

#### **Civil Penalty**

52. Complainant has determined that an appropriate civil penalty to settle the violations alleged in this CAFO is \$26,238.

53. In determining this penalty amount, Complainant considered the seriousness of the violation, the economic benefit to the violator, if any, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts 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. Complainant also considered EPA's "Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act," dated August 1998 (the "CWA Penalty Policy"), and Respondent's agreement to perform a supplemental environmental project costing at least \$175,000.

54. Within 30 days after the effective date of this CAFO, Respondent shall pay the \$26,238 civil penalty by cashier's check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311" and the docket number of this case. The payment shall be sent to:

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

If paying by EFT Respondent shall transfer \$26,238 to:

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

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

55. This civil penalty is not deductible for federal tax purposes.

56. 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

Joseph Ulfing, P.E.  
Chemical Emergency Preparedness and Prevention Section  
Enforcement and Compliance Assurance Branch  
Superfund Division (SE-5J)  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

Robert M. Peachey  
Associate Regional Counsel (C-14J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

57. Failure by Respondent to pay timely this civil penalty may subject Respondent to a civil action to collect any unpaid portion of the 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.

**Supplemental Environmental Project**

58. Respondent must complete a supplemental environmental project (SEP) designed to protect human health and the environment by reducing the Lawrenceville facility's potential for an oil spill.

59. At its Lawrenceville facility, Respondent must complete a SEP as follows:

- a. Respondent must install an automated valve control system, and associated equipment to control and monitor flow rates of raw materials pumped to the production mill used to fill Emulsion Shipping Tanks numbering 1-13 and 17-25.
- b. Preset production totals entered by the operator when milling product in Emulsion Shipping Tanks numbering 1-13 and 17-20 shall alarm if the preset total is reached.
- c. Respondent must install transmitters and associated equipment for tank level monitoring with high level alarms on Emulsion Shipping Tanks numbering 21-25.
- d. The installed automated valve control system with production totals and tank level monitoring shall have its user interface present in the milling area. Audio and visual alarms from this system will occur both in the milling area and plant office.

60. Respondent must place a down payment for this equipment with its vendor no

later than 30 days after the effective date of this CAFO.

61. Respondent must install and begin operation of this equipment no later March 1, 2016.

62. Respondent must spend at least \$175,000 to complete the SEP, and operate all components installed pursuant to the SEP for at least 5 years.

63. If Respondent ceases operation of any components installed pursuant to the SEP within 5 years of commencing operations, Respondent must notify EPA of that fact in writing by sending a report to Mr. Ulfing and Mr. Peachey at the addresses specified in Paragraph 56, above.

64. Respondent certifies that it is not required to perform or develop the activities described in this SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

65. Respondent further certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent also certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that it is signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose performance period has not expired.

66. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

67. Respondent must submit a SEP completion report to EPA within 60 days after beginning operation of the equipment, as described in paragraph 61. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Itemized cost of goods and services used to complete the SEP, documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- c. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- d. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

68. Respondent must submit all notices and reports required by this CAFO by first class mail to Mr. Joseph Ulfig, at the address provided in paragraph 56 above.

69. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

70. Following receipt of the SEP completion report described in paragraph 67 above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;

- b. There are deficiencies in the SEP as completed or in the SEP report, and EPA will give Respondent 30 days to correct the deficiencies. The parties may agree in writing to extend this 30 day period; or
- c. It has not satisfactorily completed the SEP, and EPA will seek stipulated penalties under paragraph 72 below.

71. If EPA exercises option b above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 72 below.

72. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent does not complete the SEP satisfactorily according to the requirements of this CAFO, or halts or abandons work on the SEP, Respondent must pay an additional civil penalty of \$78,713. The penalty will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.
- b. If Respondent does not complete the SEP satisfactorily according to the requirements of this CAFO, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certifies, with supporting documents, that it has spent at least 90 percent of the amount set forth in paragraph 62 above, Respondent will not be liable for any stipulated penalty under subparagraph a. above.
- c. If Respondent completes the SEP satisfactorily according to the requirements of this CAFO, but spends less than 90 percent of the amount set forth in paragraph 62 above, Respondent must pay an additional civil penalty in the amount of the difference between the amount set forth in paragraph 62 above and the amount that Respondent spent to complete the SEP.

- d. If Respondent fails to comply with the schedule in paragraphs 60 to 62 above for implementing the SEP, or fails to submit timely the SEP completion report required by paragraph 67, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$ 250	1st through 20th day
\$ 500	21st through 30th day
\$ 750	31st day and beyond.

These penalties will accrue from the date Respondent was required to meet each milestone until it achieves compliance with the milestone.

73. EPA's determination of whether Respondent satisfactorily completed the SEP and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

74. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 54, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

75. Any public statement that Respondent makes referring to the SEP must include the following language, "Emulsions, Inc. undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Emulsions, Inc. for violations of Section 311 of the Clean Water Act, 33 U.S.C. § 1321, and 40 C.F.R. Part 112."

76. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice



must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.

- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision, and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased cost for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

78. For federal income tax purposes, Respondent will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

#### **General Provisions**

79. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

80. This CAFO does not affect Respondent's responsibility to comply with the Act and any other applicable federal, state, and local laws and regulations.

81. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to federal laws and regulations administered by the EPA.

82. Respondent certifies that, to the best of its knowledge, it is complying with Section 311 of the Act, 33 U.S.C. § 1321, and its implementing regulations.

82. This CAFO is a “final order” for purposes of 40 C.F.R. § 22.31 and the August 1998 CWA Penalty Policy.

83. The CAFO shall be binding upon Respondent and Respondent’s officers, directors, agents, servants, employees, and successors or assigns.

84. EPA 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).

85. The CAFO 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 rights of the EPA or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law.

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

87. 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.

88. 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.

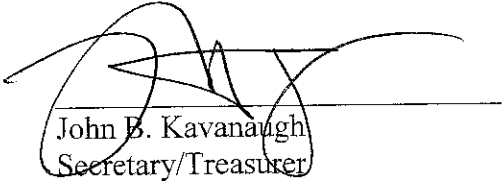
89. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.

90. This CAFO constitutes the entire agreement between the parties.

**In the Matter of: Emulsions, Inc.**  
**Docket No.**

**Emulsions, Inc., Respondent**

Date: 12/1/14



John B. Kavanaugh  
Secretary/Treasurer  
Emulsions, Inc.

**In the Matter of: Emulsions, Inc.**  
**Docket No.**

**U.S. Environmental Protection Agency, Complainant**

Date: 12-9-14



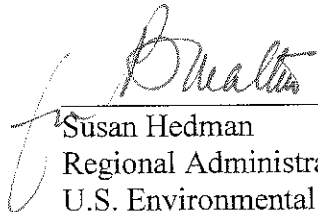
Richard C. Karl  
Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 5

In the Matter of: Emulsions, Inc.  
Docket No. CWA-05-2015-0005

**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, U.S. Environmental Protection Agency, Region 5. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date: 1-30-15

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



**In the matter of: Emulsions, Inc.**  
**Docket Number: CWA-05-2015-0005**

**CERTIFICATION OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the forgoing ***Consent Agreement and Final Order***, in the Matter of Emulsions, Inc., on the parties listed below in the manner indicated:

Copy by Certified Mail  
Return-receipt:

John B. Kavanaugh  
Secretary/Treasurer  
Emulsions, Inc.  
1104 Adams Street  
Lawrenceville, Illinois, Zip Code

Copy by E-mail to  
Attorney for Complainant:


Robert M. Peachey  
[peachey.robert@epa.gov](mailto:peachey.robert@epa.gov)

Copy by E-mail to  
Regional Judicial Officer:

Ann Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Dated:

February 10, 2015

  
Dawn Whitehead, Regional Hearing Clerk  
United States Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604  
(312) 886-3713