



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 13 2011

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Lee R. Cunningham, Esq.
Corporate Environmental Counsel, ADM
4666 Faries Parkway
Decatur, Illinois 62526

RE: Archer Daniels Midland Company
Consent Agreement and Final Order (CAFO)
Docket No. CWA-04-2011-5131(b)

Dear Mr. Cunningham:

Enclosed please find a copy of the executed CAFO as filed with the Regional Hearing Clerk (RHC) in the above-referenced matter. The CAFO is effective on the date it is filed with the RHC, and the penalty due date is calculated from the effective date.

Also enclosed, please find a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts Archer Daniels Midland Company on notice of its potential duty to disclose to the Securities Exchange Commission any environmental actions taken by the United States Environmental Protection Agency.

If you have any questions, please feel free to contact me at (404) 562-9532.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank S. Ney".

Frank S. Ney, Acting Chief
RCRA and OPA Enforcement and Compliance
Branch

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF)
)
Archer Daniels Midland Company)
2782 Chelsea Avenue)
Memphis, Tennessee 38108)
)
Respondent)

CWA SECTION 311 CLASS II
CONSENT AGREEMENT AND
FINAL ORDER
UNDER 40 C.F.R. § 22.13(b)

Docket No.: CWA-04-2011-5131(b)

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LEGAL AUTHORITY

This Consent Agreement and Final Order (CAFO) is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 311(b)(6)(B)(ii) of the Clean Water Act (“Act”), 33 U.S.C. § 1321(b)(6)(B)(ii), and pursuant to 40 CFR §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated her authority to the Regional Administrator of EPA, Region 4, who has in turn delegated her authority to the Director, Resource Conservation and Recovery Act (RCRA) Division, Region 4 (Complainant).

CONSENT AGREEMENT

Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CAFO, and Respondent hereby agrees to comply with this CAFO.

Stipulations

1. Section 311(j)(5)(A) of the CWA, 33 U.S.C. § 1321(j)(5)(A), mandates the promulgation of regulations requiring the owner of an onshore facility to prepare and submit “a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial

threat of such a discharge, of oil or a hazardous substance.” The regulations promulgated pursuant to this authority are set forth at 40 C.F.R. Part 112, Subpart D.

2. Pursuant to 40 C.F.R. § 112.20(a), an owner of an onshore facility must prepare and submit a Facility Response Plan (FRP) if, due to its location, it “could reasonably be expected to cause substantial harm to the environment by discharging oil” into navigable waters or adjoining shorelines. Pursuant to 40 C.F.R. § 112.20(f)(1)(ii)(B), a facility can reasonably be expected to cause such harm if its oil storage capacity is greater than or equal to one million gallons, and it is located such that a discharge could injure fish, wildlife and sensitive environments.

3. Respondent, Archer Daniels Midland Company, Southern Cotton Oil Company – Memphis #293, is a corporation organized under the laws of the State of Delaware. Respondent is a “person.” *See* 33 U.S.C. § 1321(a)(7).

4. Respondent is the “owner” of an “onshore facility” located in Memphis, Tennessee. *See* 33 U.S.C. §§ 1321(a)(6), (a)(10). The facility is located adjacent to the Wolf River, a navigable water. *See* 33 U.S.C. § 1362(7).

Allegations

Complainant alleges, and Respondent neither admits nor denies, that:

5. Respondent’s facility has an oil storage capacity greater than one million gallons, and the facility’s proximity to the Wolf River and wetlands is such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments. Therefore, pursuant to 40 C.F.R. §§ 112.20(a) and 112.20(f)(1)(ii)(B), the facility was required to prepare and submit an FRP.

6. The facility submitted an FRP on May 1, 2009. However, prior to that date, the facility was operating without an FRP. Therefore, Respondent failed to comply with 40 CFR § 112.20(a). Accordingly, Respondent violated Section 311(j)(5)(A) of the CWA, 33 U.S.C. § 1321(j)(5)(A).

Waiver of Rights

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

Terms of Agreement

8. Respondent agrees to pay a civil penalty of \$121,137.

Payment Terms

9. No later than 30 days after the effective date of the Final Order, Respondent shall pay the penalty by corporate cashier's or certified check, electronic funds transfer (EFT), or on-line. If paying by check, it shall be payable to "Environmental Protection Agency," bearing the notation "OSLTF – 311," and Respondent shall note the title and docket number of this case.

If Respondent sends payment by the U.S. Postal Service, the payment shall be sent to:

EPA Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency "

If paying on-line, access www.pay.gov. Enter sfo 1.1 in the search field.

Respondent shall submit a copy of the payment to the following addresses:

Patricia Bullock, Regional Hearing Clerk
Office of Environmental Accountability
US EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Doug McCurry, Section Chief
RCRA Division
US EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

10. Respondent's failure 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 CWA, 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.

11. Pursuant to 26 U.S.C. § 162(f), the penalty is not tax deductible.

General Provisions

12. Pursuant to 40 C.F.R. § 22.45(c)(4)(iii), Complainant may withdraw from this CAFO within 15 days of receipt of a Commenter's petition that the Regional Administrator set aside the CAFO on the basis that material evidence was not considered.

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

14. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the CWA, 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 CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein.

15. The undersigned representative of Respondent hereby certifies that he or she is authorized to execute and legally bind Respondent to the terms and conditions of this CAFO.

16. The following attorney represents EPA in this matter:

Bonnie Sawyer
Assistant Regional Counsel, EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

17. The following attorney represents Respondent in this matter:

Lee R. Cunningham
Corporate Environmental Counsel, ADM
4666 Faries Parkway
Decatur, Illinois 62526

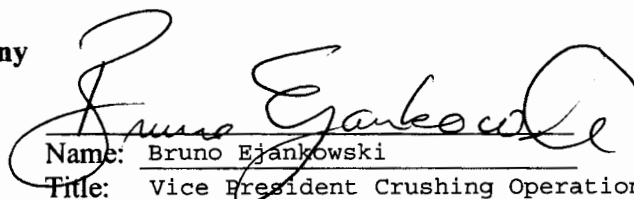
Effective Date

18. This CAFO is effective when it is filed with the Regional Hearing Clerk.

CONSENTED AND AGREED TO:


Archer Daniels Midland Company

Date: July 5, 2011


Name: Bruno Ejanowski
Title: Vice President Crushing Operations

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 7-11-11


G. Alan Farmer, Director
RCRA Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF)	CWA SECTION 311 CLASS II
)	CONSENT AGREEMENT AND
Archer Daniels Midland Company)	FINAL ORDER
2782 Chelsea Avenue)	UNDER 40 C.F.R. § 22.13(b)
Memphis, Tennessee 38108)	
)	
Respondent)	Docket No.: CWA-04-2011-5131(b)
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FINAL ORDER

Pursuant to Section 311(b)(6) of the Clean Water 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 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 Stipulations by the parties and Allegations by the Complainant are adopted as Findings in this Final Order. Archer Daniels Midland Company, the Respondent is ordered to comply with the terms of the Consent Agreement, Docket No. CWA-04-2011-5131(b).

Date: SEP 13 2011


Gwendolyn Keyes Fleming
Regional Administrator

Docket No. CWA-04-2011-5131(b)

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached Consent Agreement and Final Order, in the Matter of Archer Daniels Midland Company, Inc., Docket No. CWA-04-2011-5131(b) (filed with the Regional Hearing Clerk on 9/13, 2011) was served on 9/13, 2011 in the manner specified to each of the person set forth below:

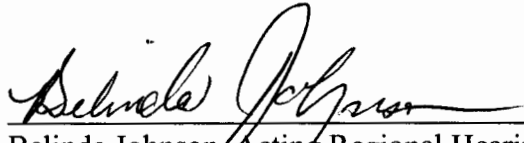
Mr. Lee R. Cunningham, Esq.
Corporate Environmental Counsel
Archer Daniels Midland Company
4666 Faries Parkway
Decatur, Illinois 62526

CERTIFIED MAIL
Return Receipt Requested

Quantindra Smith
RCRA & OPA Enforcement & Compliance Branch
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Via EPA's Internal Mail and PDF

Date: 9/13/2011


Belinda Johnson, Acting Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9511