

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
BF Byproducts, LLC	)	UNILATERAL ADMINISTRATIVE
13210 Russell Drive	)	ORDER
Cabool, Missouri	)	
	)	Docket No. CWA-07-2015-0056
Respondent.	)	
_____	)	

I. JURISDICTION AND GENERAL PROVISIONS

1. This Unilateral Administrative Order (“Order”) is issued pursuant to the authority vested in the President of the United States by Section 311(c) and (e) of the Clean Water Act (“CWA”), 33 U.S.C. § 1321(c) and (e). This authority has been delegated to the Administrator of the United States Environmental Protection Agency (“EPA”) by Executive Order No. 12777, 58 Fed. Reg. 54757 (October 22, 1991). The Administrator has further delegated this authority to EPA’s Regional Administrators by EPA Delegation Nos. 2-85 (May 11, 1994) and 2-89 (January 19, 1993). This authority has been further delegated in EPA Region 7 to the Director of the Air and Waste Management Division by EPA Regional Delegation Nos. R7-2-085 and R7-2-089.

2. This Order pertains to a discharge or a substantial threat of a discharge of oil from an oil storage and transfer facility located at 13210 Russell Drive in Cabool, Missouri (“Facility”). This Order requires the Facility owner, BF Byproducts, LLC (“Respondent”), to conduct the actions described below to abate or mitigate an imminent and substantial threat to

public health or welfare of the United States that may be presented by the actual or substantial threat of a discharge of oil from the Facility into navigable waters of the United States.

3. EPA has notified the State of Missouri of this action pursuant to Section 311(e)(1)(B) of the CWA, 33 U.S.C. § 1321(e)(1)(B).

4. The Oil Pollution Prevention regulations, 40 C.F.R. Part 112, establish procedures to prevent the discharge of oil from non-transportation onshore facilities into the waters of the United States or adjoining shorelines pursuant to the authority in Section 311(j) of the CWA, 33 U.S.C. § 1321(j). Owners or operators of onshore facilities that, due to their location, could reasonably be expected to discharge oil in “harmful quantities” into the waters of the United States must prepare and fully implement a Spill Prevention Control and Countermeasure (“SPCC”) Plan under 40 C.F.R. § 112.3(a).

## II. PARTIES BOUND

5. This Order applies to and is binding upon Respondent and Respondent’s members, managers, directors, officers, employees, agents, successors, and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent’s responsibilities under this Order.

6. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order.

## III. FINDINGS OF FACT

7. Respondent owns the Facility located at 13210 Russell Drive in Cabool, Missouri, where Respondent stores and processes oil, specifically used vegetable oils. The Facility covers 7.4 acres and consists of an office/maintenance shop building, approximately seven aboveground

storage tanks ranging in capacity from 1,000 to 7,000 gallons, approximately ninety used oil collection dumpsters ranging in capacity from 120 to 300 gallons, and two crudely constructed surface impoundments having an estimated capacity of 30,000 to 50,000 gallons. The total oil storage capacity of the Facility is estimated by EPA to be approximately 68,000 gallons, in addition to the approximate 60,000 to 100,000 gallon capacity of the surface impoundments.

8. On March 30, 2015, the Missouri Department of Natural Resources' (MDNR) Environmental Emergency Response spill line received a call from the Cabool, Missouri, Fire Chief, reporting a release of oil from the Facility.

9. On March 31, 2015, MDNR attempted to inspect the Facility but was denied access. Later that day MDNR obtained a search warrant to obtain access to the Facility. This search warrant was executed by MDNR on April 1, 2015.

10. During MDNR's inspection of the Facility, evidence of leaking oil storage tanks and/or associated piping and hoses, surface dumping of oil, overflowing, leaking, and eroding surface impoundments containing approximately 60,000 gallons to 100,000 gallons of a mixture of oil and runoff, were observed and documented.

11. During MDNR's inspection of the Facility, oil was observed being discharged from the Facility into a receiving stream. The discharge was occurring as a surface impoundment at the Facility, filled with an oil and water mixture, had "overtopped" and its contents were discharging into the receiving stream, an unnamed tributary of Big Piney River. This constituted a "discharge" of "oil" as those terms are defined in Section 311(a)(1) of the

CWA, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2. The quantity of oil discharged into the receiving stream is estimated to be in excess of 1,000 gallons. Additionally, a significant amount of soil at the Facility was contaminated with oil.

12. The unnamed tributary of the Big Piney River and the Big Piney River are each “navigable waters” of the United States, within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. §§ 110.1 and 112.2.

13. On April 2, 2015, State of Missouri personnel observed that discharged oil caused a sheen and/or a sludge or emulsion to be deposited beneath the surface of the water in the unnamed tributary to Big Piney River, or adjoining shorelines, and therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3 which implements Section 311(b)(3) and (b)(4) of the Act. While MDNR initially responded to the discharge, at MDNR’s request, EPA has been the lead agency overseeing the Facility response from April 6, 2015 to the present.

14. While responding to the discharge, the EPA’s Federal On-Scene Coordinator (FOSC) saw no evidence of secondary containment at the Facility, or any other sign that the SPCC requirements, which are intended to prevent discharges, had been complied with. Additionally, while the FOSC was responding to the discharge, trucks containing vegetable oil continued to make deliveries and shipments from the property, indicating Respondent will continue operating the Facility.

### III. CONCLUSIONS OF LAW

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

16. Respondent is an “owner or operator” as defined by Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6).

17. Respondent is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

18. As evidenced by the oil discharge at the Facility described in the Statement of Facts, the storage of oil in surface impoundments, the poor condition of storage containers, the evidence of past spills and leaks, and the absence of adequate secondary containment at the Facility, there was both a “discharge” and a continuing substantial threat of a “discharge”, as defined in Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), and 40 C.F.R. § 112.2.

19. The “discharge” and “substantial threat of discharge” is into or on the navigable water and on the adjoining shorelines to a navigable water.

20. The quantity of oil that the Facility has discharged and has the potential to discharge is a “harmful quantity” within the meaning of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3) and 40 C.F.R. § 110.3(b), because the discharge and the substantial threat of future discharges caused and may cause a film or sheen upon or a discoloration of the surface of

the water or adjoining shorelines and/or caused or may cause a sludge or emulsion to be deposited beneath the surface of the water or adjoining shorelines.

21. The discharge and the threat of discharge is a violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), because a harmful quantity of oil has been discharged and may be discharged in the future from the Facility into or upon navigable waters of the United States

22. The discharge and the substantial threat of a discharge from the Facility poses an imminent and substantial threat to public health or welfare of the United States, including fish and other wildlife, public and private property, shorelines, habitat, and other living and nonliving natural resources under the jurisdiction and control of the United States.

23. The actions required by this Order are necessary to protect the public health and welfare of the United States, including fish and other wildlife, public and private property, shorelines, habitat, and other living and nonliving natural resources under the jurisdiction and control of the United States.

24. The actions required by this Order are in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") and are authorized by EPA pursuant to the authority granted in Section 311(c) and (e) of the CWA, 33 U.S.C. § 1321(c) and (e), as delegated by the President in Executive Order 12777, Section 2(b)(1), 56 Fed. Reg. 54757 (October 22, 1991).

#### IV. ORDER

25. Based upon the Findings of Fact and Conclusions of Law set forth above, EPA hereby orders Respondent to comply with all requirements of this Order and perform the following actions:

- i. Immediately upon receipt of this Order, Respondent shall cease spilling, leaking, or otherwise discharging oil onto or in the ground and/or surface waters at the Facility.
- ii. Within sixty (60) days of the effective date of this Order, Respondent shall prepare an SPCC Plan and implement the SPCC Plan, as required by 40 C.F.R. §§ 112.3(d) and 112.12, after EPA comment pursuant to subparagraph xii and Paragraph 41. This shall include, but not be limited to, the following items listed in subparagraph iii through xii immediately below.
- iii. Respondent's SPCC Plan shall be reviewed and certified by a Professional Engineer, pursuant to 40 C.F.R. § 112.3(d). This certification attests that the Professional Engineer is familiar with the requirements of the SPCC regulations, that the Professional Engineer has visited and examined the Facility, and the Plan has been prepared in accordance with good engineering practices, including consideration of applicable industry standards, and with the requirements of 40 C.F.R. § 112.
- iv. Respondent shall provide sized secondary containment for all containers with a capacity of 55 gallons and greater, including totes, drums, and grease containers.
- v. Respondent shall conduct bulk storage container inspections, where each aboveground container is tested or inspected on a regular schedule for integrity, pursuant to 40 C.F.R. § 112(c)(6)(i). Respondent shall also inspect the containers supports and foundations.

- vi. Respondent shall visually inspect the outside of all containers used for storing oil at the Facility for signs of deterioration, discharges, or accumulations of oil, pursuant to 40 C.F.R. § 112(c)(6)(i).
- vii. Respondent shall engineer or update each container installation in accordance with good engineering practices, pursuant to 40 C.F.R. § 112(c)(8).
- viii. Respondent shall not use a container for the storage of oil unless its material and construction are compatible with the material stored and conditions of storage, such as pressure and temperature, pursuant to 40 C.F.R. § 112(c)(1).
- ix. Respondent shall ensure that the tank containment area is impervious, pursuant to 40 C.F.R. § 112(c)(2).
- x. Respondent shall position or locate mobile or portable storage containers to prevent a discharge, pursuant to 40 C.F.R. § 112(c)(11).
- xi. Within ninety (90) days of the effective date of this Order, Respondent shall ensure that its employees and drivers are familiar with the SPCC Plan and are educated in proper oil handling, transfer, and emergency procedures.
- xii. Upon completion, Respondent shall transmit the SPCC Plan to EPA's FOISC, listed immediately below. The submitted SPCC Plan will be subject to the comment provisions of Paragraph 40.

Paul Doherty, Federal On-Scene Coordinator  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219



doherty.paul@epa.gov

xiii. Respondent shall report any oil discharges from the Facility to the National Response Center at 1-800-424-8802 and the EPA Region 7 Spill Line at 913-281-0991.

26. Confidential Business Information. Respondent may assert a business confidential claim pursuant to 40 C.F.R. § 2.203(b) with respect to any or part of all of any information submitted to EPA pursuant to this Order, provided such claims are allowed by CWA Section 308(b)(2), 33 U.S.C. § 1318(b)(2). EPA shall only disclose information covered by a business confidential claim to the extent permitted by and by means of the procedures set forth at 40 C.F.R. Part 2, Subpart B. If no such claims accompany the information when it is received by EPA, EPA may make it available to the public without further notice to Respondent.

27. Access to Property and Information. Respondent must provide access to the Facility and to all documents related to conditions at the Facility and work conducted under the Order. Respondent must provide this access to EPA and its contractors and authorized representatives.

28. Record Retention. Respondent shall preserve all documents and information relating to the oil found on or discharged from the Facility for six years following completion of the actions required by this Order. Respondent shall provide documents and information retained under this Section at any time before expiration of the six year period upon the written request of EPA.

29. Compliance with Other Laws. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable Federal, State, and local laws and regulations. Where any portion of the work requests a Federal or state permit or approval, Respondent shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Order is not, and shall not be construed to be, a permit issued pursuant to any Federal or state law or regulations.

VI. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE

30. Violation of, or failure to comply with, any provision of this Order may subject Respondent to civil penalties of up to \$37,500 per day of violation or an amount up to three times the costs incurred by the Oil Spill Liability Trust Fund pursuant to Section 311(b)(7) of the CWA, 33 U.S.C. § 1321(b)(7) and 40 C.F.R. Part 19.

VI. RESERVATION OF RIGHTS

31. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect the public health or welfare of the United States, or to prevent, abate, or minimize an actual or substantial threat of a discharge of oil, hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, from or outside of the Facility. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CWA or any other

applicable law. The United States reserves the right to bring an action against Respondent under any applicable authority, including but not limited to CWA Section 311(f), 33 U.S.C. § 1321(f), and/or OPA Sections 1002 and 1015, 33 U.S.C. §§ 2702 and 2715, for penalties, injunctive relief, and/or recovery of any costs incurred by the United States related to this Order and not reimbursed by Respondent. Response costs shall include, but are not limited to, past costs, direct costs, indirect costs, costs of monitoring, and accrued interest as provided in CWA Section 311(f), 33 U.S.C. § 1321(f) and OPA Section 1005, 33 U.S.C. § 2705.

32. Notwithstanding any other provision of this Order, at any time during the response action, EPA reserves the right to perform its own studies, complete the removal action, and seek reimbursement from Respondent for its costs, or seek any other appropriate relief. Nothing in this Order shall limit the authorities of the FOSC as outlined in the NCP.

33. Notwithstanding any other provision of this Order, EPA and the United States reserve all rights against Respondent with respect to liability, including criminal liability, for violations of federal or state law arising from any past, present, or future discharges or substantial threat of discharge of oil or any hazardous substance at or from the Facility.

34. Nothing in this Order shall preclude EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional orders, and/or additional response actions as EPA may deem necessary, or from requiring Respondent in the future to perform additional activities pursuant to the Resource Conservation and Recovery Act (RCRA),

the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Clean Water Act, the Oil Pollution Act, or any other applicable law.

35. Nothing in this Order shall constitute a satisfaction of or discharge from any claim or cause of action against Respondent or any person, for any liability such person may have under CWA, OPA, other statutes, or the common law, including but not limited to any claims of the United States for penalties, costs, damages, and interest.

36. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated by such court's order.

#### XI. OTHER CLAIMS

37. By issuing this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. Neither EPA nor the United States shall be deemed a party to any contract entered into by the Respondent's directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

#### V. MODIFICATIONS

38. Modifications to any plan or schedule required by this Order may be made in writing by EPA's FOSC or at the FOSC's oral direction. If the FOSC makes an oral modification, it will be memorialized in writing within two (2) days, provided, however, that the

effective date of the modification shall be the date of the FOOSC's oral direction. Modifications to any portion of the Order, other than plans or schedules, may only be made in writing under signature of EPA's signatory below.

39. No informal advice, guidance, suggestions, or comment by EPA regarding reports, plans, specifications, or any other writing submitted by Respondent shall relieve Respondent of the obligation to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

#### XX. NOTICE OF COMPLETION

40. After EPA's review of Respondent's SPCC Plan, when EPA determines that all requirements of this Order have been fulfilled, with the exception of any continuing obligations required by this Order, EPA will either (i) notify Respondent in writing or (ii) provide a list of the deficiencies and require that Respondent modify the SPCC Plan to correct such deficiencies. Failure by Respondent to implement the updated SPCC Plan shall be a violation of this Order.

#### XVI. OPPORTUNITY TO CONFER AND EFFECTIVE DATE

41. This Order shall become effective ten (10) days after its receipt by Respondent. Prior to the effective date, Respondent has the opportunity to confer with and/or submit information to EPA concerning the validity of this Order, including the basis for the Order, the terms of the Order, and the applicability of the Order to Respondent. Within three (3) days of receipt of this Order, Respondent may request a conference regarding the Order or to submit information to EPA. If Respondent requests a conference or wishes to submit information, the

conference or submission of information shall take place within seven (7) days of receipt of this Order. EPA shall deem a failure to request a conference or to submit information as a waiver of the opportunity to confer.

42. Requests for a conference shall be made in writing to the EPA contact identified in Paragraph 25xii.

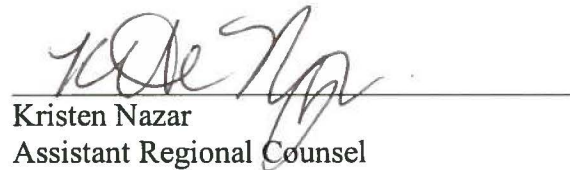
43. The Effective Date of this Order shall be ten (10) days following Respondent's receipt of the Order. The terms of this Order shall become effective and enforceable against Respondent upon the Effective Date.

IT IS SO ORDERED.



Becky Weber  
Director, Air and Waste Management Division  
U.S. Environmental Protection Agency, Region 7

*May 6*  
~~April~~ \_\_, 2015



Kristen Nazar  
Assistant Regional Counsel

*May 6<sup>th</sup>*  
~~April~~ \_\_, 2015

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Unilateral Administrative Order to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Blvd., Lenexa Kansas 66219.

I further certify that on the date noted below I sent a copy of the foregoing Order by first class certified mail, return receipt requested, to:

John E. Price  
Registered Agent, BF Byproducts, LLC  
2805 S. Ingram Mill Road  
Springfield, Missouri 65804

and via first class mail to:

Don Willoh, Attorney  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, MO 65102.

5/6/15  
Date

Brenda F. Terrill  
Signature