

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

Received by
EPA Region 7
Hearing Clerk

BEFORE THE ADMINISTRATOR

In the Matter of)	
)	Docket No. CWA-07-2023-0063
Cedar Falls Utilities,)	
)	ADMINISTRATIVE ORDER FOR
Respondent)	COMPLIANCE ON CONSENT
)	
Proceedings under Section 311(c) and (e) of)	
the Clean Water Act, 33 U.S.C. § 1321(c))	
and (e))	

1. This Administrative Order on Consent (“Order”) is issued pursuant to the authority vested in the U.S. Environmental Protection Agency (“EPA”) by Sections 311(c) and (e) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1318 and 1321(c) and (e), to Respondent Cedar Falls Utilities, a municipally owned public utility in Cedar Falls, Iowa.

2. The authority to issue an order pursuant to Sections 311 (c) and (e) of the CWA was delegated to the Administrator of EPA on October 22, 1991, by Executive Order 12777, 56 Fed. Reg. 54757, and further delegated to Regional Administrators by EPA Delegation Nos. 2-85 (Administrative Orders Under Section 311(e) of the CWA, January 19, 2017) and 2-89 (Removal of Discharge or Threat of Discharge, January 19, 1993). The Regional Administrator, EPA Region 7, has delegated the authority to the Director of the Enforcement and Compliance Assurance Division.

Statutory and Regulatory Framework

3. The objective of the CWA, 33 U.S.C. § 1251 *et seq.*, is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

4. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil or hazardous substances 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.

5. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2 define “oil” as “oil of any kind or in any form, including, but not limited to, petroleum [or] fuel oil”

6. Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), authorizes the EPA to promulgate a regulation to define what discharges of oil may be harmful to the public health or welfare or environment of the United States. 40 C.F.R. § 110.3 defines such discharges to include discharges of oil that violate applicable water quality standards or cause a film or a sheen upon

or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

7. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides in part 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.”

8. To implement Section 311(j)(1)(C), the EPA promulgated regulations to prevent oil pollution at 40 C.F.R. Part 112 that set forth the requirements for the preparation and implementation of Spill Prevention Control and Countermeasure Plans (“SPCC Plans”).

9. The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore facilities with an aboveground storage capacity of 1,320 gallons or greater, engaged in gathering, storing, transferring, distributing, using, or consuming oil or oil products, which due to their locations, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines. *See* 40 C.F.R. § 112.1.

10. 40 C.F.R. § 112.3 requires the owner or operator of an onshore or offshore facility that meets the SPCC criteria to prepare in writing and implement a SPCC Plan in accordance with all applicable sections of 40 C.F.R. Part 112.

11. 40 C.F.R. § 112.7 includes general requirements that apply to all facilities (unless otherwise excluded). 40 C.F.R. §§ 112.8 and 112.12 specify requirements for spill prevention, control, and countermeasures for onshore facilities (excluding production facilities).

12. Section 311(c) of the CWA, 33 U.S.C. § 1321(c), provides authority, delegated to the EPA, to “remove or arrange for the removal of a discharge, and mitigate or prevent a threat of a discharge . . .” of oil.

13. Section 311(e) of the CWA, 33 U.S.C. § 1321(e), provides authority, delegated to the EPA, to issue “administrative orders that may be necessary to protect the public health and welfare” due to an “actual or threatened discharge of oil . . . from a . . . facility in violation of [Section 311(b) of the CWA]” if “the President determines that there may be an imminent and substantial threat to the public health or welfare.”

Allegations of Fact and Conclusions of Law

14. Respondent is a municipally owned public utility that is authorized to conduct business in the state of Iowa pursuant to Iowa Code Chapter 388. CFU is owned by the citizens of Cedar Falls, Iowa and operated on a not-for-profit basis with governance of the organization delegated by the Cedar Falls, Iowa City Council delegated to a five-member Board of Trustees.

15. Respondent is an association, so is a person within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

16. At all times relevant to this action, Respondent was the owner and/or operator of power generating stations or transformer stations in and/or near Cedar Falls, Iowa, that are “facilities” 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. Specifically, Respondent owns and/or operates oil storage tanks or equipment at the following locations (collectively, the “Facilities”):

a. 1 Utility Parkway (Streeter Station) – The Streeter Station location is Respondent’s primary electricity generating station. Above ground oil storage capacity at this location exceeds 1,320 gallons and includes, but is not limited to, oil contained in transformers, oil-filled barrels, and a centrifuge.

b. West 27th Street location – The 27th Street location is a backup generation station. Oil stored at this location includes transformers and 500,000 and 100,000-gallon above ground bulk storage tanks (“ASTs”).

c. Various substations – Respondent operates at least seven additional substations throughout the service area that have active or stored oil containing transformers onsite. These transformers are oil-filled operational equipment within the meaning of 40 C.F.R. 112.2. Above ground oil storage capacity at these locations exceeds 1,320 gallons.

17. Respondent utilizes a single SPCC plan for all of its oil storage locations.

18. The Streeter Station location is bordered on the south by Dry Run Creek, which flows into the Cedar River. Floor drains inside the facility connect to National Pollutant Discharge Elimination System (“NPDES”) Outfall #1 of the facility, which discharges to Dry Run Creek. The Cedar River is approximately 300 feet away from the facility’s east boundary.

19. The West 27th Street location has surface drainage that flows by ditches approximately ¼ of a mile to the West Branch of the Dry Run Creek, which flows into the Cedar River.

20. The multiple substations each have surface drainage features, including storm drains, that flow into either Dry Run Creek, Black Hawk Creek, or the Cedar River.

21. Dry Run Creek, Black Hawk Creek, and the Cedar River are navigable waters of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

22. Dry Run Creek, Black Hawk Creek, and the Cedar River are identified as impaired by Iowa pursuant to CWA Section 303(d), 33 U.S.C. § 1313(d).

23. Respondent is engaged in storing, processing, using, or consuming oil or oil products located at the Facilities, and was so engaged at all times relevant to this action.

24. The Facilities are “non-transportation-related” facilities within the meaning of Appendix A of 40 C.F.R. § 112, as incorporated by reference within 40 C.F.R. § 112.2.

25. The Facilities are “onshore facilities” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

26. The Facilities are non-transportation-related onshore facilities with an aboveground storage capacity of 1,320 gallons or greater which, due to their 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, are all SPCC-regulated facilities.

27. Pursuant to Section 311(j)(1)(C) of the CWA, Executive Order 12777, and 40 C.F.R. § 112.1, Respondent, as the owner and/or operator of SPCC-regulated facilities, is and was subject to the SPCC regulations at all times relevant to this action.

28. On November 22, 2019, Respondent reported to the National Response Center that 50 gallons of lube oil had entered the NPDES outfall through a facility floor drain at the Streeter Station location. That outfall discharges to Dry Run Creek.

29. On September 10, 2020, a representative of the EPA inspected the Streeter Station location, the West 27th Street location, and multiple substations to determine compliance with the SPCC regulations of 40 C.F.R. Part 112. A copy of the inspection report was transmitted to Respondent on October 13, 2020.

Findings of Violation

Failure to Fully Prepare and Implement an SPCC Plan

30. 40 C.F.R. § 112.3 requires Respondent to fully prepare and implement an SPCC plan. As part of implementing the SPCC plan, Respondent is required to perform routine checks and maintenance on all SPCC regulated facilities to maintain compliance with the CWA.

31. The EPA's inspection documented Respondent's failure to fully prepare and implement an SPCC plan at the Facilities. At the time of the inspection, the documented deficiencies included the following:

- a. Respondent failed to fully implement the SPCC Plan, in violation of 40 C.F.R. § 112.3(a)(1). In particular, Table 1 of the SPCC Plan stated that the 500,000-gallon AST at the 27th Street Station was to be removed from service by December 2003 and that an oil cooler at Streeter Station was "to be piped to pit," and neither had happened at the time of EPA's inspection.
- b. Respondent's SPCC plan was not signed or stamped as certified by a professional engineer, in violation of 40 C.F.R. § 112.3(d).
- c. Respondent failed to amend its SPCC Plan and implement that amendment within six months of a change at the facility that materially affected the potential for a discharge, in violation of 40 C.F.R. § 112.5(a). In particular, at the time of EPA's inspection, the Plan had not been amended or updated to include additional substations and transformer storage areas or to identify actions to prevent spills similar to the November 2019 spill at Streeter Station.
- d. Respondent failed to complete a review and evaluation of the SPCC plan at least once every five years, in violation of 40 C.F.R. § 112.5(b).

- e. At the time of the inspection, Respondent's SPCC plan did not have the full approval of management at a level of authority to commit the necessary resources to fully implement the Plan, in violation of 40 C.F.R. § 112.7.
- f. Respondent failed to include accurate information in the SPCC Plan's facility diagrams, in violation of Section 1.6 of Respondent's SPCC Plan and 40 C.F.R. § 112.7(a)(3). Omissions include a container of approximately 400 gallons at Streeter Station that forms part of a centrifuge process, a transformer storage area at the 27th Street Station, and additional substations with oil filled operational equipment.
- g. Respondent failed to provide appropriate secondary containment for bulk storage containers and for transfer areas, equipment, and activities at Streeter Station and at the West 27th Street location, in violation of 40 C.F.R. § 112.7(c). Although Respondent met the discharge-history criteria set forth in 40 C.F.R. § 112.7(k)(1) and therefore could elect to implement an alternative to secondary containment for oil-filled operational equipment pursuant to 40 C.F.R. § 112.7(k)(2), Respondent did not implement an inspection or monitoring program to detect oil-filled operational equipment failure and discharges as required by 40 C.F.R. § 112.7(k)(2). Respondent's failure to implement either secondary containment or an alternative for its oil-filled operational equipment violated 40 C.F.R. § 112.7(c).
- h. Respondent failed to keep records of all inspections and tests conducted in accordance with the SPCC plan and signed by the appropriate supervisor or inspector for a period of three years, in violation of 40 C.F.R. § 112.7(e).
- i. Respondent failed to evaluate field-constructed aboveground containers for the potential for brittle fracture or other catastrophic failure when the container undergoes a repair, alteration, reconstruction or change in service or has discharged oil or failed due to brittle fracture failure or other catastrophe, in violation of Section 4.1 of Respondent's SPCC Plan and 40 C.F.R. § 112.7(i).
- j. Respondent failed to restrain drainage from diked storage areas by valves to prevent a discharge into the drainage system or facility effluent treatment system, except where facility systems are designed to control such discharge, and to design drainage from undiked areas with a potential for discharge to flow into ponds, lagoons, or catchment basins to retain oil or return it to a facility, in violation of 40 C.F.R. § 112.8(b). In particular, facility drainages flow through chemical valves that are not accessible, not inspected, and not maintained.
- k. Respondent did not have impervious secondary containment around the 100,000-gallon and the 500,000-gallon ASTs at the 27th Street Station, in violation of Section 6 of the SPCC Plan and 40 C.F.R. § 112.8(c)(2).
- l. Integrity testing for the ASTs was not conducted, in violation of Section 6.5 of Respondent's SPCC Plan and 40 C.F.R. § 112.8(c)(6).
- m. Respondent did not equip each bulk storage container with, and regularly test, a liquid level sensing device in violation of 40 C.F.R. § 112.8(c)(8).

n. Respondent failed to promptly correct visible discharges resulting in a visible loss of oil from the 100,000-gallon AST, and to promptly remove any accumulations of oil in diked areas, in violation of 40 C.F.R. § 112.8(c)(10). At the time of EPA's inspection, the 100,000-gallon AST at the 27th Street Station was leaking an estimated 1 pint per day, with diesel staining and dead vegetation and soil saturation at the base of that tank.

o. Respondent failed to engineer or update each container installation in accordance with good engineering practice to avoid discharges, in violation of 40 C.F.R. § 112.8(c)(8).

p. When piping is not in service or is in standby service for an extended time, Respondent failed to cap the piping or blank-flange the terminal connection at the transfer point and mark it as to origin, in violation of 40 C.F.R. § 112.8(d)(2).

q. Respondent failed to regularly inspect aboveground valves, piping, and appurtenances to assess the general condition of items, such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, locking of valves, and metal surfaces, in violation of 40 C.F.R. § 112.8(d)(4).

32. Respondent's failure to fully prepare and implement its SPCC plan for the Facilities is a violation of 40 C.F.R. § 112.7 and 40 C.F.R. § 112.3.

Continuing Threat

33. Based on Respondent's history of violating SPCC requirements, the scope and breadth of continued SPCC noncompliance, and a release of oil to an outfall that discharges to water resulting from the noncompliance, the EPA finds there exists a continuing threat of a "discharge" of oil as defined in Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), and 40 C.F.R. § 112.2, into navigable waters of the United States at Respondent's Facilities.

34. The threat of a discharge of oil from the Facilities may pose an imminent and substantial threat to public health or welfare of the United States, including drinking water, 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.

Order

35. Based upon the Findings of Fact and Conclusions of Law set forth above, and pursuant to the authority of Sections 311(c) and (e) of the Clean Water Act, 33 U.S.C. §§ 1321(c) and (e), EPA hereby orders and Respondent agrees to take the following actions and provide the following information in accordance with the schedules, terms, and conditions of this Order:

a. By June 30, 2023, Respondent shall take all actions necessary to address and correct all identified deficiencies and/or noncompliance with 40 C.F.R. Part 112.

b. By June 30, 2023, Respondent shall prepare and fully implement an SPCC Plan certified by a Professional Engineer, as required by 40 C.F.R. § 112.3(d).

c. By July 7, 2023, Respondent shall submit a copy of the certified SPCC Plan to EPA that fully describes the actions taken by Respondent to correct the identified deficiencies and/or noncompliance with 40 C.F.R. Part 112.

Submittals

36. All submittals to EPA that are required of Respondent by this Order shall, where possible, be made by electronic submission to: *aaron.mark@epa.gov*.

37. Electronic submissions to the EPA will be deemed submitted on the date they are transmitted electronically.

38. Any report, notification, certification, or other communication that cannot be submitted electronically to the EPA shall be submitted in hard copy to:

Mark Aaron
Compliance Officer
U.S. Environmental Protection Agency
Enforcement & Compliance Assurance Division – Chemical Branch
11201 Renner Boulevard
Lenexa, Kansas 66219.

General Provisions

39. The EPA and Respondent acknowledge that this Order has been negotiated in good faith and that neither consenting to the terms of this Order, nor the actions undertaken by Respondent in accordance with this Order, constitutes an admission of liability.

40. By entering into this Order, Respondent (1) consents to and agrees not to contest the EPA's authority or jurisdiction to issue or enforce this Order, (2) agrees to undertake all actions required by the terms and conditions of this Order, and (3) consents to be bound by the requirements set forth herein.

41. Respondent waives all remedies, claims for relief, and otherwise available rights to judicial or administrative review that it may have with respect to any issue of fact or law set forth in this Order, including, but not limited to, any right of judicial review of this Order under the CWA or under the Administrative Procedure Act, 5 U.S.C. §§ 701–706.

Reservation of Rights

42. Nothing in this Order shall be construed to relieve Respondent of the requirements of the CWA or any other applicable requirements under federal, state, or local law. The EPA reserves the right to take, direct, or order all actions as necessary as authorized by law for any violation of this Order, and for other future or past violations of the CWA. Issuance of this Order shall not be deemed an election by the EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever.

43. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of liability for its responsibility to obtain and comply with any required local, state, and/or federal permits.

44. Failure to comply with the terms of this Order may result in Respondent's liability for significant statutory civil penalties for each violation under Section 311(b)(7)(B) of the CWA, 33 U.S.C. § 1321(b)(7)(B), as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court for the District of Kansas may impose such penalties if, after notice and opportunity for a hearing, the court determines that Respondent has violated the CWA as described above and failed to comply with the terms of this Order. In determining the amount of any penalty, the court will consider the seriousness of violation, the economic benefit resulting from the violations, any history of such violations, any good faith efforts made to comply with legal requirements, the economic impact a penalty may have, and such other matters as justice may require. The district court has the authority to impose separate civil penalties for any violations of the CWA and for any violations of this Order.

Access and Requests for Information

45. Nothing in this Order shall limit the EPA's right to obtain access to and/or to inspect the facility and/or to request additional information from Respondent pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318, and/or any other authority.

46. Respondent must provide and/or obtain access to the facility, to off-site areas where access is necessary to implement this Order, and to all documents related to conditions at the facility and work conducted under this Order. Respondent must provide this access to the EPA and the EPA's contractors and representatives upon presentation of verifiable documentation of identity and authorization. Respondent must notify the EPA immediately of any denial of access to areas that Respondent does not own or control.

47. Respondent must retain all documents and information relating to the work performed under and the implementation of this Order and relating to the oil and/or hazardous substances found on or discharged from the facility, for five years after completing removal actions required by this Order. Respondent must provide these documents and/or this information at any time before the five-year period expires at the written request of the EPA. Before destroying any documents or information, Respondent must notify the EPA that the documents and/or information are available to the EPA for inspection and, upon request, must provide the documents and/or information to the EPA.

Severability

48. If any provision or authority of the Order or the application of the Order to Respondent is held by federal judicial authority to be invalid, the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Effective Date

49. This Order shall be effective upon signature by the EPA. Any amendments shall become effective and enforceable on the date that the amendment is signed by all parties. Unless

otherwise stated, all time periods stated herein shall be calculated in calendar days from the effective date.

Modification

50. The EPA may subsequently amend this Order, upon written agreement with Respondent, in accordance with the EPA's authority under the CWA. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by the original Order. All deadlines for performance under this Order may be extended upon written approval by EPA, at its sole discretion, without formal amendment to the Order.

Termination

51. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA.

Signatories

52. The undersigned for each party has the authority to bind each respective party to the terms and conditions of this Order. This Order may be signed in part and counterpart by each party.

Electronic Service

53. Respondent consents to receiving the filed Consent Agreement/Final Order electronically at the following email address: *gpeters@howardandhoward.com*.

For the Respondent, Cedar Falls Utilities:

Signature: 

Date: 06/26/2023

Name: Steven E. Bernard

Title: General Manager/CEO

For the Complainant, U.S. Environmental Protection Agency Region 7:

David Cozad
Director
Enforcement and Compliance Assurance Division

Natasha Goss
Attorney-Advisor
Office of Regional Counsel

Certificate of Service

I certify that on the date noted below I delivered a true and correct copy of this Consent Agreement and Final Order by electronic mail, to:

For Complainant:

Natasha Goss
Office of Regional Counsel
U.S. Environmental Protection Agency Region 7
goss.natasha@epa.gov

Mark Aaron
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 7
aaron.mark@epa.gov

For Respondent:

Gary A. Peters, Counsel for Cedar Falls Utilities
Howard & Howard
450 W 4th St
Royal Oak, MI 48067
gpeters@howardandhoward.com

Date

Signature