

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:	:	
	:	
Perdue Grain and Oilseed, LLC.	:	
31149 Old Ocean City Road	:	
Salisbury, MD 21804,	:	
	:	
Respondent.	:	Proceeding under Section 311(j) and
	:	311(b)(6)(B)(i) of the Clean Water Act,
	:	33 U.S.C. § 1321(j) and 1321(b)(6)(B)(i)
	:	
	:	Docket No. CWA-03-2019-0007
	:	
	:	

CONSENT AGREEMENT

1. This Consent Agreement 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)(i) of the Clean Water Act (“CWA”), as amended, 33 U.S.C. § 1321(b)(6)(B)(i), and under the authority provided by Section 22.13(b) and 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. The Administrator has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has delegated it to the Director of the Region’s Enforcement and Compliance Assurance Division (“Complainant”).
2. The parties agree to the commencement and conclusion of this matter by issuance of this Consent Agreement and Final Order (collectively “CAFO”), as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b) and 22.18(b), and having consented to the entry of this CAFO, agree to comply with the terms of this CAFO.
3. For purposes of this proceeding only, Perdue Grain and Oilseed, LLC. (“Respondent”) admits to the jurisdictional allegations set forth in this Consent Agreement.
4. Except as set forth in Paragraph 3 above, Respondent neither admits nor denies the specific factual allegations, findings of fact, and conclusions of law set forth in this Consent Agreement.
5. Respondent agrees not to contest EPA’s jurisdiction with respect to the execution, enforcement, and issuance of this CAFO.

6. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
7. Each party to this CAFO shall pay its own costs and attorney's fees.

Statutory and Regulatory Authority

8. Congress enacted the CWA, 33 U.S.C. §§ 1251 *et seq.*, in 1972. In Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), Congress required the President to promulgate regulations which would, among other things, establish procedures, methods, and other requirements for preventing discharges of oil from onshore facilities into navigable waters and for containing such discharges.
9. By Executive Order 12777, the President delegated the authority to promulgate regulations for preventing discharges of oil from onshore facilities into navigable waters and for containing such discharges under Section 311(j) of the CWA to EPA for non-transportation-related onshore and offshore facilities.
10. Pursuant to its delegated authority under Section 311(j) of the CWA, 33 U.S.C. § 1321(j), EPA promulgated the Oil Pollution Prevention Regulations, codified at 40 C.F.R. Part 112, Subparts A - C.
11. Pursuant to 40 C.F.R. § 112.1, an owner or operator of a non-transportation-related onshore or offshore facility with an above-ground oil storage capacity exceeding 1,320 gallons, engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products, which due to its location, 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 is subject to Part 112.
12. According to 40 C.F.R. § 112.3, an owner or operator of an onshore or offshore facility subject to Part 112 must prepare in writing and implement a Spill Prevention, Control, and Countermeasure ("SPCC") plan, in accordance with § 112.7 and any other applicable section, including, but not limited to, § 112.8.
13. Congress amended Section 311 of the CWA, 33 U.S.C. § 1321, by enacting the Oil Pollution Act of 1990 ("OPA"), which required, in part, that the President promulgate regulations which would mitigate potential harm caused by vessels, and onshore and offshore oil facilities that, because of their 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 ("substantial harm facilities"). 33 U.S.C. § 1321(j)(5)(A). Specifically, Congress directed the President to promulgate regulations requiring the owners or operators of substantial harm facilities to submit to the President plans for responding to worst case oil discharges and substantial threats of such discharges.

14. Pursuant to Section 311(j)(5)(A) of the CWA, 33 U.S.C. § 1321(j)(5)(A), the EPA Administrator amended 40 C.F.R. Part 112 in 1994 by promulgating oil spill response regulations requiring the owners or operators of non-transportation substantial harm facilities to, *inter alia*, develop and implement a facility response plan (“FRP”), an oil spill response training program, and a program of oil spill response drills and exercises (“Oil Spill Response Regulations”). These Oil Spill Response Regulations are codified at 40 C.F.R. Subpart D, § 112.20 and 112.21, and became effective on August 30, 1994.
15. Pursuant to 40 C.F.R. § 112.20(a), the owner or operator of 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 or adjoining shorelines shall prepare and submit to EPA an FRP.
16. A facility could, because of its location, reasonably be expected to cause substantial harm to the environment if: (1) the facility transfers oil over water to or from vessels and has a total oil storage capacity greater than or equal to 42,000 gallons; or (2) the facility’s total oil storage capacity is greater than or equal to 1,000,000 gallons and one of the following is true: (a) the facility does not have sufficient secondary containment to contain the capacity of the largest above-ground oil storage tank plus freeboard for precipitation within each storage area; (b) the facility is located at a distance (as calculated from the appropriate formula in 40 C.F.R. Part 112, Appendix C) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments; (c) the facility is located at a distance (as calculated from the appropriate formula in 40 C.F.R. Part 112, Appendix C) such that a discharge from the facility would shut down a public drinking water intake; or (d) the facility has had a reportable oil spill of at least 10,000 gallons within the last five years. 40 C.F.R. § 112.20(f)(1)(i-ii).
17. To meet the requirements of 40 C.F.R. § 112.20(h), an FRP shall follow the format of the model facility-specific response plan included in Appendix F to 40 C.F.R. Part 112, unless an equivalent response plan acceptable to the EPA Regional Administrator has been prepared to meet State or other Federal requirements.
18. For violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), EPA has authority, under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), as amended by the Debt Collection Improvement Act and implemented by 40 C.F.R. Part 19, *Adjustment of Civil Monetary Penalties for Inflation*, to file a Class I Administrative Complaint seeking a civil penalty of \$18,943 per day for each day during which a violation continues, up to a maximum of \$47,357, for violations occurring after November 2, 2015.

Findings of Fact and Conclusions of Law

19. Respondent is a Maryland Corporation with a principal place of business located at 31149 Old Ocean City Road, Salisbury, Maryland 21804.
20. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.
21. Respondent is the owner and operator of an edible oil refinery and storage operation located at 6906 Zion Church Road, Salisbury, Maryland, (the “Facility”).
22. The Facility began operations in 1958.
23. On August 11, 2016, EPA conducted an SPCC and FRP compliance inspection (“Inspection”) of the Facility.
24. At the time of the Inspection, and since 1958, Respondent was the owner and/or operator of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.
25. The Facility has a total aboveground oil storage capacity of approximately 3.9 million gallons.
26. Peggy Branch, a tributary to the North Prong of the Wicomico River, originates on the grounds of the Facility.
27. Peggy Branch and the North Prong of the Wicomico River are navigable waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2.
28. The Facility is an onshore facility 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.
29. Due to its location, the Facility could reasonably be expected to discharge oil in harmful quantities, as defined by 40 C.F.R. § 110.3, into or upon navigable waters of the United States or its adjoining shoreline.
30. Pursuant to 40 C.F.R. § 112.1, Respondent, as the owner and operator of the Facility, is subject to the Oil Pollution Prevention Regulations codified at 40 C.F.R. Part 112.
31. Pursuant to 40 C.F.R. § 112.3, Respondent is required to prepare in writing and implement an SPCC plan, in accordance with 40 C.F.R. § 112.7 and any other applicable section.

32. The Facility is a “substantial harm” facility pursuant to 40 C.F.R. § 112.20(f)(1) because the Facility has a total storage capacity greater than or equal to 1 million gallons and is located at a distance such that a discharge could cause injury to fish, wildlife and sensitive environments.
33. Pursuant to 40 C.F.R. § 112.20(f)(1), the Facility is subject to the Oil Spill Response Regulations.
34. At the time of the Inspection, the Respondent had not submitted FRP acceptable to the Regional Administrator to meet State or other Federal requirements; therefore, pursuant to 40 C.F.R. § 112.20(h)(4), Respondent’s FRP for the Facility is required to follow the format of the model facility-specific response plan included in Appendix F of 40 C.F.R. Part 112. Respondent provided EPA with a copy of its FRP on August 21, 2017.
35. EPA believes that, at the time of the Inspection, Respondent failed to adequately implement the Oil Pollution Prevention Regulations and the Oil Spill Response Regulations, as set forth below.
36. At the time of the Inspection:
 - a. Respondent failed to comply with 40 C.F.R. § 112.20(a), which requires that the owner or operator of a facility that, because of its location (as provided in 40 C.F.R. § 112.20(f)), could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines shall prepare and submit a facility response plan to the Regional Administrator. At the time of the Inspection, the Respondent’s Facility: (1) had an oil storage capacity of 3.9 million gallons of oil, (2) is located adjacent to Peggy Branch of the Wicomico River, and (3) had not submitted an FRP to the Regional Administrator.
 - b. Respondent failed to comply with 40 C.F.R. § 112.7(a)(3)(iii), which, in pertinent part, requires the owner or operator of a facility for which an SPCC plan must be prepared in writing and implemented to describe in the SPCC plan the discharge or drainage controls around containers and other structures, equipment, and procedures for controlling a discharge. At the time of the Inspection, the SPCC plan failed to describe the loading procedures for the tanks at the Facility, especially for the tanks that have been identified as lacking overfill protection.
 - c. Respondent failed to comply with 40 C.F.R. § 112.7(c), which, in pertinent part, requires the owner or operator of a facility for which an SPCC plan must be prepared in writing and implemented to provide complete discussions pertaining to and implement secondary containment and/or diversionary structures or equipment to prevent discharged oil from reaching a navigable water. At the time of the Inspection, the SPCC plan failed to adequately

discuss containment or diversionary structures or equipment and Respondent had not adequately implemented secondary containment and/or diversionary structures to ensure that discharges from above ground piping and parked tanker trucks will not reach a navigable water.

- d. Respondent failed to comply with 40 C.F.R. § 112.8(b), which requires that the owner or operator of a facility for which an SPCC plan must be prepared in writing and implemented to provide complete discussions in the SPCC plan pertaining to the Facility's drainage. At the time of the Inspection, the SPCC plan failed to adequately discuss an appropriate design of the Facility's drainage systems from un-diked areas that potentially discharge into ponds, lagoons, or catchment basins designed to retain oil or return it to the Facility.
- e. Respondent failed to comply with 40 C.F.R. § 112.8(c)(2), which requires that the owner or operator of a facility for which an SPCC plan must be prepared in writing and implemented provide complete discussions in the SPCC plan and implement requirements pertaining to bulk storage containers. At the time of the Inspection, the SPCC plan did not adequately discuss secondary containment for Tanks CSO-3, CSO-4 and UO2 nor did it adequately discuss the valves in the containment structures in the Day Tank Farm. Moreover, the Facility did not have secondary containment for Tanks CSO-3, CSO-4 and UO2.
- f. Respondent failed to comply with 40 C.F.R. § 112.8(c)(6), which requires that the owner or operator of a facility for which an SPCC plan must be prepared in writing and implemented provide complete discussions and implement requirements pertaining to testing or inspection of aboveground containers for integrity on a regular schedule and whenever material repairs are made. At the time of the Inspection, the SPCC plan did not adequately discuss an integrity testing program and could not provide documentation that regular integrity testing or inspections were being conducted at the Facility.
- g. Respondent failed to comply with 40 C.F.R. § 112.8(c)(11), which requires that the owner or operator of a facility for which an SPCC plan must be prepared in writing and implemented provide complete discussions and implement requirements pertaining to positioning or locating mobile or portable oil storage containers to prevent oil discharges and providing the secondary containment with sufficient freeboard to contain precipitation. At the time of the Inspection, the Facility did not have adequate secondary containment for all mobile or portable oil storage containers.

SETTLEMENT

- 37. In accordance with 40 C.F.R. § 22.18(c), and in full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of law, and in full satisfaction of all civil penalty claims pursuant

thereto, for the purpose of this proceeding, the Respondent consents to the assessment of a civil penalty for the violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), in the amount of **\$22,500**.

38. The penalty was calculated after consideration of the applicable statutory penalty factors in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), including the allegations regarding the seriousness of the violation; the economic benefit to the violator, if any; the degree of culpability; history of prior violations, if any; any other penalty for the same incident; the nature, extent, and degree of success of the violator's mitigation efforts; the economic impact of the penalty on the violator; and other matters as justice may require. The applicable statutory factors were applied in accordance with EPA's *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* (August 1998).
39. Respondent consents to the issuance of this Consent Agreement, and consents for purposes of settlement to the payment of the civil penalty cited in Paragraph 37 and to performance of the Supplemental Environmental Project, as set forth below.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

40. The following Supplemental Environmental Project ("SEP") is consistent with applicable EPA policy and guidelines, specifically EPA's *Supplemental Environmental Projects Policy, 2015 Update* (March 10, 2015).
41. Respondent agrees to install T-traps and pollution control valves that will be placed in the portion of Peggy Branch that originates on the grounds of the Facility. The T-traps would include both passive and active controls, which will allow for the total shutdown of flow into Peggy Branch and a complete containment of a catastrophic spill onsite, as detailed in the SEP Proposal attached as Exhibit A, and incorporated into this Consent Agreement. The completion date for the SEP is two hundred and ten (210) days from the effective date of this Consent Agreement ("SEP Completion Deadline").
42. Respondent's total expenditure for installation of the SEP shall not be less than \$165,000, in accordance with the specifications set forth in the SEP Proposal. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report described in Paragraph 46, below.
43. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulations; nor is Respondent required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

44. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.
45. Respondent shall notify EPA SPCC/FRP Coordinator, Arlin Galarza-Hernandez, at the address noted in Paragraph 46.a, below, when such implementation is complete. EPA may grant Respondent an extension of time to fulfill its SEP obligations if EPA determines, in its sole discretion, that, through no fault of Respondent, Respondent is unable to complete the SEP obligations within the time frames required by Paragraph 41 and, if extensions are granted, by this Paragraph. Requests for any extension must be made in writing within 48 hours of Respondent's knowledge of any event, such as an unanticipated delay in obtaining governmental approvals, the occurrence of which renders the Respondent unable to complete either the SEP within the required time frame ("force majeure event"), and prior to the expiration of the applicable SEP Completion Deadline. Any such requests should be directed to Arlin Galarza-Hernández at the mail and email addresses noted in Paragraph 46.a, below.
46. SEP Completion Report
- a. Respondent shall submit to EPA a SEP Completion Report via first class mail to Arlin Galarza-Hernández, U.S. EPA Region III, 1650 Arch Street (Mailcode 3ED12), Philadelphia, PA 19103, and via email, galarza-hernandez.arlin@epa.gov, within forty-five (45) days of completing the SEP, as set forth in Paragraph 41. The SEP Completion Report shall contain the following information:
- i. detailed description of the SEP as implemented, including photographs of the completed work;
 - ii. a description of any problems encountered and the solution thereto; and
 - iii. itemized costs.
- b. Respondent shall sign the report required by this Paragraph and certify under penalty of law that the information contained therein is true, accurate, and not misleading by including and signing the following statement:
- I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fines and imprisonment
- c. Respondent agrees that failure to submit the report required by this Paragraph 46 shall be deemed a violation of this CAFO and, in such an event,

Respondent will be liable for stipulated penalties pursuant to Paragraph 49, below.

- d. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, “acceptable documentation” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.
47. Respondent agrees that EPA may inspect the locations at which the SEP is implemented at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein and as required by this CAFO.
48. EPA Acceptance of SEP Completion Report
- a. Upon receipt of the SEP Completion Report, EPA may exercise one of the following options:
 - i. notify the Respondent in writing that the SEP Completion Report is deficient, provide an explanation of the deficiencies, and grant Respondent an additional thirty (30) days to correct those deficiencies;
 - ii. notify the Respondent in writing that EPA has concluded that the project has been satisfactorily completed; or
 - iii. notify the Respondent in writing that EPA has concluded that the project has not been satisfactorily completed, and seek stipulated penalties in accordance with Paragraph 49 herein.
 - b. If EPA elects to exercise option (i) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached within this thirty (30) day period, EPA shall provide to the Respondent a written statement of its decision on the adequacy of the completion of the SEP, which shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CAFO. In the event either the SEP is not completed as required herein or the SEP Completion Report is not submitted to EPA, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 49 herein.

49. Stipulated Penalties

- a. In the event that Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP described in Paragraph 41, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the costs of the SEP required by Paragraph 41, above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - i. Except as provided in subparagraph (ii) below, if the SEP has not been completed in accordance with this CAFO and as described in Exhibit A, Respondent shall pay a stipulated penalty to EPA in the amount of \$67,500.
 - ii. If a SEP is not completed in accordance with Paragraph 41, but the Complainant determines that the Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.
 - iii. If the SEP is completed in accordance with Paragraph 41, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to EPA in the amount of \$6,750.
 - iv. If the SEP is completed in accordance with Paragraph 41, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.
 - v. For failure to submit the SEP Completion Report required by Paragraph 46, above, Respondent shall pay a stipulated penalty in the amount of \$500 for each day after the report was originally due until the report is submitted.
- b. The determination of whether the SEP has been implemented as described in Exhibit A and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
- c. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties, in accordance with the provisions of Paragraphs 51 and 57, below. Interest and late charges shall be paid as set forth in Paragraphs 54 and 55, below.

Payment Terms

50. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalty described in this CAFO, Respondent shall pay the civil penalty of \$22,500 in accordance with this CAFO. The civil

penalty amount shall become due and payable immediately upon the effective date of this CAFO.

51. Payment shall be made by a company check, by an electronic funds transfer (“EFT”), or by on-line payment.
- a. If paying by check, Respondent shall submit a company check, payable to “Environmental Protection Agency,” and bearing the notation “OSLTF–311.” If paying by check, Respondent shall note on the check the title and docket number (CWA-03-2019-0007) of this case.
 - b. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
 - c. If Respondent sends payment by a private delivery service, the payment shall be addressed to:

U.S. Environmental Protection Agency
1005 Convention Plaza
SL-MO-C2GL
St. Louis, MO 63101
Contact: (314) 418-1028
 - d. If paying by EFT, the Respondent shall make the transfer to:

Federal Reserve Bank of New York
ABA 021030004
Account 68010727
33 Liberty Street
New York, NY 10045
 - e. If paying by EFT, field tag 4200 of the Fedwire message shall read: “(D 68010727 Environmental Protection Agency).” In the case of an international transfer of funds, the Respondent shall use SWIFT address FRNYUS33.
 - f. If paying through the Department of Treasury’s Online Payment system, please access “www.pay.gov,” and enter sfo 1.1 in the search field. Open the form and complete the required fields and make payments. Note that the type of payment is “civil penalty,” the docket number “CWA-03-2019-

0007” should be included in the “Court Order # or Bill #” field, and “3” should be included as the Region number.

52. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent’s failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including additional interest, penalties, and/or administrative costs of handling delinquent debts.
53. Interest on the civil penalty will begin to accrue on the effective date of this CAFO. EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest on the portion of a civil penalty not paid within such thirty (30) calendar day period will be assessed at the rate of the U.S. Treasury Tax and Loan Rate in accordance with 40 C.F.R. § 13.11(a).
54. The costs of the Agency’s administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA’s Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
55. A penalty charge of six percent per year will be assessed monthly on any portion of a payment that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
56. In order to avoid the assessment of administrative costs for overdue debts, as described above, Respondent must remit payment for the civil penalty in accordance with the payment deadline set forth above.
57. Respondent shall submit a copy of the check (or, in the case of an EFT transfer, a copy of the EFT confirmation) to the following persons:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
R3_Hearing_Clerk@epa.gov

Suzanne M. Parent
Associate Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia PA, 19103
parent.suzanne@epa.gov

58. Failure by Respondent to pay the penalty assessed by the Final Order in full 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.

General Provisions

59. The undersigned officer of Respondent represents and warrants that he or she has the authority to bind the Respondent and its successors or assigns to the terms of this Consent Agreement.
60. The provisions of this Consent Agreement and the Final Order, if issued, shall be binding upon Respondent and Respondent's successors or assigns.
61. This Consent Agreement and the accompanying Final Order resolve only the civil penalty claims for the specific violations alleged in this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Nor shall anything in this Consent Agreement and the accompanying Final Order be construed to limit the United States authority to pursue criminal sanctions. In addition, this settlement is subject to all limitations on the scope of resolution and the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, Complainant reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this Consent Agreement and accompanying Final Order following its filing with the Regional Hearing Clerk. 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.
62. The effective date of this Consent Agreement and the accompanying Final Order (which is signed by the Regional Administrator of EPA Region III, or his designee,

the Regional Judicial Officer) shall be the date the CAFO is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice, and shall terminate upon Respondent's full compliance with its terms.

63. This Consent Agreement does not create any right in or grant any cause of action to any third party.

For the Respondent, Perdue Grain and Oilseed, LLC.

Date: 3/21/19

By: 
Signature

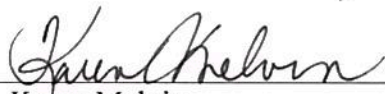
N. WAYNE HUDSON
Print Name

VP of OPERATIONS
Title

For the Complainant, U.S. Environmental Protection Agency, Region III

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: AUG 29 2019

By: 
Karen Melvin
Director, Enforcement and Compliance
Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: 8/29/19


By: 
Suzanne M. Parent
Associate Regional Counsel
U.S. EPA – Region III

EXHIBIT A

July 20, 2018

Via Email/Regular Mail

Andrew M. Duchovnay, Esquire (3RC20)
U.S. EPA, Region 3
1650 Arch Street
Philadelphia, PA 19103-2029

Thomas M. Lingan

t (410) 244-7820
f (410) 244-7742
tmlingan@venable.com

**Re: Perdue AgriBusiness LLC - 6907 Zion Church Road, Salisbury, Maryland
Proposed Supplemental Environmental Project**

Dear Andy:

As previously discussed, Perdue AgriBusiness LLC (“Perdue” or the “Company”) is interested in pursuing a Supplemental Environmental Project (“SEP”) to offset the administrative penalty being considered for alleged violations of Section 311(j) of the Clean Water Act (33 USC § 1321(j)) at the Company’s feed mill and soy processing facility at 6907 Zion Church Road, Salisbury, Maryland (the “ZCR Facility” or the “Facility”). This letter responds to your request for more specific information regarding the proposed SEP. The information below corresponds to the items listed in the “Checklist for Submitting a Proposal for a Supplemental Environmental Project (SEP)”, which was attached to your July 11, 2018 email to me on this topic.

1. A full and detailed description of the proposed project, including a proposed timeline for implementation.

Perdue is offering the installation of T-traps and Pollution Control Valves that will be placed in Peggy Branch, which transects a portion of the Zion Church Road site and exits the property at the southern border. The “headwaters” of Peggy Branch is treated effluent from the Facility wastewater treatment plant when that effluent is not being pumped to an onsite irrigation system. Stormwater drainage from the site also discharges to Peggy Branch.

Currently there are two “passive” “T-traps” deployed in Peggy Branch near where the waterway exits the ZCR Facility. These traps capture floatables and are capable of skimming small amounts of oil that could potentially be discharged from Facility operations into Peggy Branch. The existing T-traps do not impede, nor are they capable of impeding, the flow in Peggy Branch.

The new T-traps that Perdue would install include the passive controls of the existing devices, but also an active control feature consisting of a valve that would allow the total shutdown of flow in Peggy Branch and the complete containment of a catastrophic spill onsite. These valves would allow for the complete closure and containment of flow within the boundaries of the ZCR Facility. Perdue would additionally purchase and install a third T-trap upstream of the two existing structures that would assure sufficient capacity to wholly contain a significantly large spill onsite. A photo of the type of T-trap to be installed is attached.

Perdue estimates that the design, engineering, permitting, site preparation and installation of the structures could be accomplished in six months.

Andrew M. Duchovnay, Esquire
July 20, 2018
Page 2

2. A full and detailed description of the relationship (nexus) between the violation and proposed project.

The alleged violations relate to EPA's Oil Pollution Prevention regulations at 40 CFR Part 112 *et seq.* and result from a Facility inspection conducted by EPA to ensure regulatory compliance with Section 311(j) of the Clean Water Act. This inspection was also conducted for the purpose of assuring compliance with the Facility's Spill Prevention, Control and Countermeasures Plan, as well as the preparation of a Facility Response Plan, as contemplated in 40 CFR Part 112.20.

The SEP proposed directly addresses issues related to EPA's inspection and alleged violations. The installation of the T-traps and control valves with the capability of wholly containing the flow within Peggy Branch onsite would significantly enhance Perdue's spill response capabilities at the ZCR Facility.

3. A statement regarding the category of the project.

The proposed SEP falls within the "pollution reduction" category of allowable SEP projects. The installation of the T-traps and control valves would qualify as a "containment" technique and would result in a "decrease in the amount and/or toxicity of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise being released into the environment." ("U.S. EPA Supplemental Environmental Projects Policy 2015 Update" ("EPA SEP Policy Update") at p. 13). The EPA SEP Policy states that this type of SEP may include "improved containment", which is the obvious purpose of the new T-traps and control valves.

4. An itemized listing of all costs to implement the project, including capital costs, annual operating costs, and savings to the Respondent's business.

An itemized list of the project components, estimated project cost and proposed timeline is attached. Total project costs are estimated to be approximately \$165,000. It is not anticipated that the installation of these structures will result in a cost savings to the Company.

5. A substantive description of the benefit to public health or the environment from the SEP.

The Perdue ZCR Facility is located in a predominantly rural area near Salisbury, Maryland, on Maryland's Eastern Shore, and includes a soybean processing plant, a soybean oil refinery, feed mill, two poultry hatcheries and support operations. Millions of gallons of oil products are stored throughout the Facility in aboveground storage tanks, as well as temporarily in tanker trucks and railroad cars making deliveries to and from the Facility. Approximately 500,000 pounds of crude soybean oil are transferred from the Soybean Plant to the Oil Refinery on a daily basis. Tanker trucks routinely conduct oil loading and unloading operations at the Facility.

Andrew M. Duchovnay, Esquire
July 20, 2018
Page 3

Peggy Branch is a tributary to the Wicomico River. It runs through the ZCR site, exiting at the southern border, and runs further west into Johnson Pond, a recreational waterbody. Johnson Pond drains into the Wicomico River, which flows west into the Chesapeake Bay. Both Peggy Branch and Johnson Pond are designated by the Maryland Department of the Environment ("MDE") as Use Class I: "Water Contact Recreation and Protection of Nontidal Warm Water Aquatic Life". In addition, there are numerous delineated National Wetland Inventory wetlands downstream of the Facility along Peggy Branch, Johnson Pond, Middle Neck Branch and the Wicomico River.


Peggy Branch empties into the Middle Neck Branch to form the easternmost tributary to Johnson Pond. Johnson Pond is used for boating and fishing and is designated a Special Bass Management Area providing habitat and fishing opportunities for bass, bluegill, black crappie, sunfish, yellow perch, white perch and other fish species.

The Vulnerability Analysis prepared as part of the ZCR Facility Response Plan (May 2018) notes that discharges to adjacent waterways "would have a significant impact upon fish and wildlife resources within and along the stream banks." (FRP at p. 3-8). Furthermore, according to the Vulnerability Analysis, aquatic species with low mobility, including freshwater mussels and other shellfish, would be most susceptible to a discharge from the Facility. (FRP at p. 3-9). The impact on waterfowl in the event of a catastrophic release was also noted. *Id.*

The installation of the T-traps and control valves will result in a significant benefit to these downstream waterbodies, aquatic and other natural resources, including nontidal wetlands. The SEP will add protection to vital recreation and fishery areas, as well as Use Class I waterways.

I trust the information provided is responsive to the request. Please let me know if any additional information is needed in support of this proposal.

Sincerely,



Thomas M. Ligan

TML:dg
Enclosures
20961536-v1
122079-323422

cc: Drew Getty, Esq.
Wayne Black
Martin Stewart
Greg Rowe

ZCR Complex New T-Traps and Pollution Control Valves Installation Project

Date- July 19, 2018

Project purpose- Is to enhance the capabilities of the ZCR Complex to Control and Counter spills or leaks of material that might enter the stream (Peggy's Branch). The completion of this project will allow for the complete stoppage of liquid in the stream (Peggy's Branch)

Project Components-

1. Design and Environmental Engineering.
2. Sediment and Erosion Control Plan.
3. Sediment Removal and Disposal.
4. Bulkhead, Dam or Dike Installation.
5. Installation of parts for pollution control.

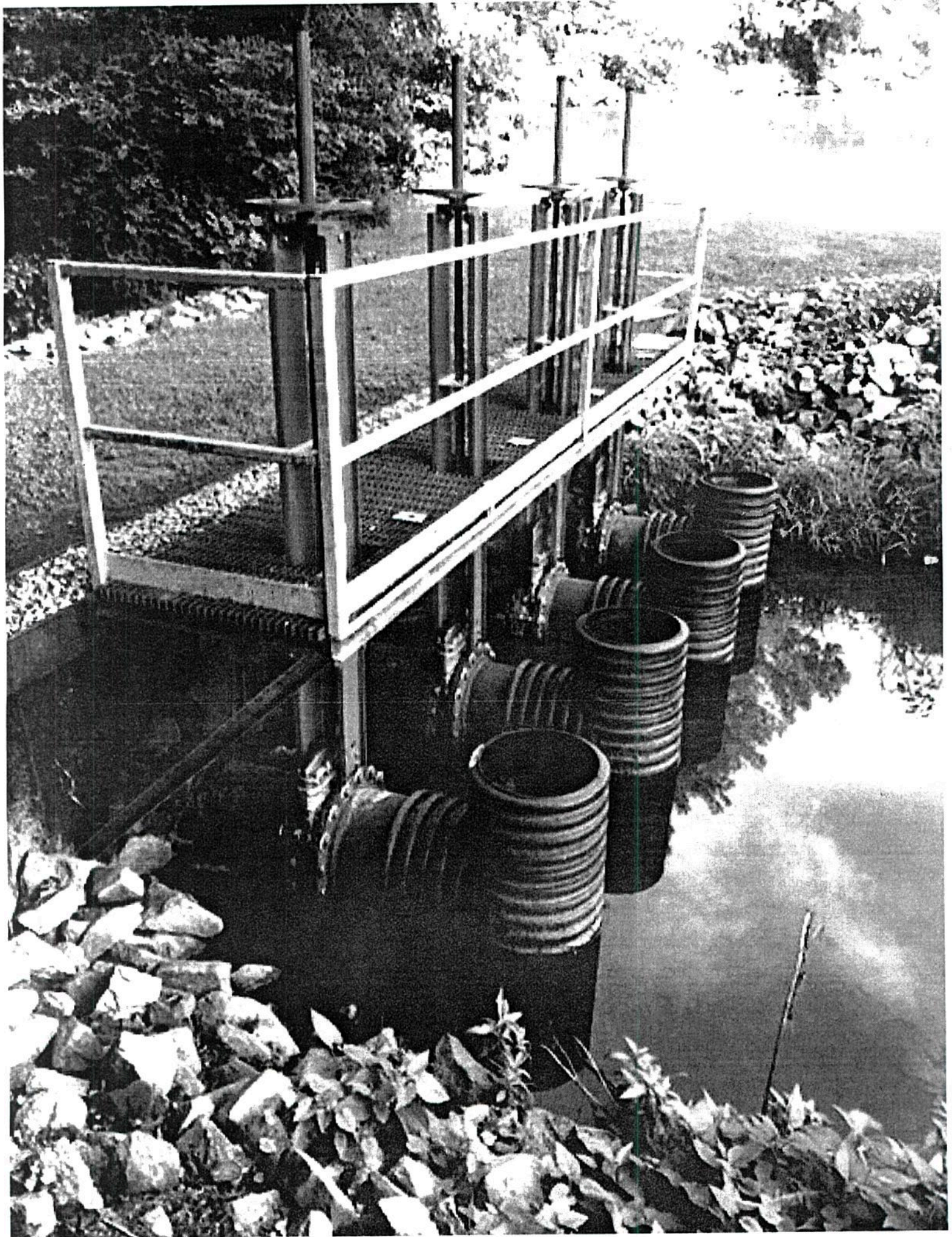
Estimated Projected Cost-

1. Design and Environmental Engineering - \$ 20,000.00
 2. Sediment and Erosion Control Plan - \$ 15,000.00
 3. Sediment Removal and Disposal- \$ 20,000.00
 4. Bulkhead, Dam or Dike Installation- \$ 50,000.00
 5. Cost for parts and installation of pollution controls - \$ 60,000.00
- Total - \$165,000.00

Project Time Line

1. Design Engineering and Environmental permitting– 60 Days
2. Sediment and Erosion Control Plan – 30 Days
3. Sediment Removal and Disposal- 30 Days
4. Bulkhead, Dam or Dike Installation- 15 Days
5. Installation of parts for pollution control- 15 Days

Total Time Line – 5 Months



**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of: :
:
Perdue Grain and Oilseed, LLC. :
31149 Old Ocean City Road :
Salisbury, MD 21804, :
:
Respondent. :
:
:
:
:
_____ :

U.S. EPA-REGION 3-RHC
FILED-4SEP2019pm3:02

Proceeding under Section 311(j) and
311(b)(6)(B)(i) of the Clean Water Act,
33 U.S.C. § 1321(j) and 1321(b)(6)(B)(i)

Docket No. CWA-03-2019-0007

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Perdue Grain and Oilseed, LLC, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* (August 1998) and the statutory factors set forth in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8).


NOW, THEREFORE, PURSUANT TO Section 311(b)(6)(B)(i) of the Clean Water Act of the Clean Water Act, 33 U.S.C. § 1321(b)(6)(B)(i), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **TWENTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$22,500)** in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive,

extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the Clean Water Act and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Sept. 4, 2019
Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

