



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

FEB - 8 2016

REPLY TO THE ATTENTION OF:

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

Mark D. Pawelski  
Daubert Chemical Company, Inc.  
4700 South Central Avenue  
Chicago, Illinois 60638

Re: Consent Agreement and Final Order  
Daubert Chemical Company, Inc – Chicago, Illinois  
Docket No: **CWA-05-2016-0008**

Dear Mr. Pawelski:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed with the Regional Hearing Clerk on

February 8, 2016.

The civil penalty in the amount of \$14,000 is to be paid in the manner prescribed in paragraphs 45 through 49 of the CAFO. Please be certain to reference your check and transmittal letter with docket number CWA-05-2016-0008. Your payment is due by March 9, 2016.

Please feel free to contact Joseph Ulfig at (312) 353-8205 if you have any questions regarding the enclosed document. Please direct any legal questions to John Steketee, Associate Regional Counsel, at (312) 886-0558. Thank you for your assistance in resolving this matter.

Sincerely,

Michael J. Hans, Chief  
Chemical Emergency Preparedness  
and Prevention Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: )

Daubert Chemical Company, Inc. )  
4700 S. Central Avenue )  
Chicago, Illinois, )

Respondent. )  
\_\_\_\_\_ )

CWA SECTION 311 CLASS I  
CONSENT AGREEMENT  
AND FINAL ORDER

Docket No.  
CWA-05-2016-0008



CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 311(b)(6)(B)(i) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990, and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Director of the Superfund Division, United States Environmental Protection Agency, Region 5.

3. Respondent is Daubert Chemical Company, Inc. ("Respondent"), a corporation doing business in the State of Illinois.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

#### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent waives its right to request a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, its right to appeal this CAFO, and consents to the issuance of this CAFO without further adjudication.

#### **Statutory and Regulatory Background**

10. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil...from onshore...facilities, and to contain such discharges ....”

11. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to the EPA his authority under

Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), to issue the regulations referenced in the preceding paragraph for non-transportation-related onshore facilities.

12. EPA subsequently promulgated the Spill Prevention, Control, and Countermeasure (SPCC) regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the Act, 33 U.S.C. § 1251 *et seq.* The SPCC regulations established certain procedures, methods and requirements for each owner or operator of a non-transportation-related onshore facility, if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as the EPA has determined in 40 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States.

13. The regulation at 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated facility prepare and implement a written SPCC plan in accordance with 40 C.F.R. § 112.7 and any other applicable sections of 40 C.F.R. Part 112.

14. The regulation at 40 C.F.R. § 112.8 requires that the owner or operator of an SPCC-regulated facility meet the specific discharge prevention and containment procedures listed in that section.

15. Specific regulatory requirements applicable to the Facility are set forth in more detail below.

16. Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and the regulation at 40 C.F.R. § 19.4, authorize EPA to assess a civil penalty for violations of the SPCC regulations promulgated pursuant to Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), of up to \$16,000 per day for violations that occurred after January 12, 2009, up to a maximum of

\$37,500.

**Factual Allegations and Alleged Violation**

17. Respondent is a corporation organized under the laws of Illinois with a place of business located at 4700 S. Central Avenue, Chicago, Illinois. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.

18. Respondent is the owner and operator, within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of an onshore bulk oil storage facility located on the Respondent's place of business ("the Facility").

19. Oil from the Facility, in the event of a discharge, could reasonably be expected to flow to sewer access points located within and various point near the Facility. These sewer access points are connected to the Metropolitan Water Reclamation District, whose system discharges to the Chicago Sanitary and Ship Canal.

20. The Chicago Sanitary and Ship Canal is a navigable water of the United States within the meaning of 40 C.F.R. § 112.2 and Section 502(7) of the Act, 33 U.S.C. § 1362(7).

21. The Facility has above-ground storage capacity greater than 1,320 gallons of oil in containers each with a shell capacity of at least 55 gallons.

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

23. The Facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

24. The Facility is an onshore facility within the meaning of Section 311(a)(10) of the

Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

25. The Facility is therefore a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity (“an SPCC-regulated facility”).

26. Operations commenced at the Facility over sixty years ago.

27. Pursuant to the Act, E.O. 12777, and 40 C.F.R. § 112.1, as the owner and operator of an SPCC-regulated facility, Respondent is subject to the SPCC regulations.

28. As set forth above, the regulation at 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated facility prepare and implement a written SPCC plan in accordance with 40 C.F.R. § 112.7 and any other applicable section of 40 C.F.R. Part 112.

29. On May 31, 2012, EPA inspected the Facility and evaluated the Facility’s SPCC plan, which was last revised in October of 2011.

30. 40 C.F.R. § 112.7(a)(1) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to prepare a SPCC Plan that includes a discussion of the facility’s conformance with each of the requirements listed in Part 112. Daubert had not included all applicable rule requirements in the Facility’s then existing SPCC Plan, such as those pertaining to oil-filled operational equipment, among other requirements, in violation of 40 C.F.R. § 112.7(a)(1).

31. 40 C.F.R. § 112.7(a)(3)(i) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to prepare a SPCC Plan that addresses the type of oil and storage capacity of each fixed container; the type of oil and storage capacity for each mobile or portable container or an estimate of their potential number, the types of oil, and anticipated storage capacities. During

the inspection, numerous drums, totes, and mobile or portable containers were observed within the facility. The Facility's then existing SPCC Plan did not address the type of oil and storage capacity of each fixed container present at the Facility; the type of oil and storage capacity for each mobile or portable container or an estimate of their potential number, the types of oil, and anticipated storage capacities at the Facility, in violation of 40 C.F.R § 112.7(a)(3)(i) and 40 C.F.R. § 112.7(a)(1).

32. 40 C.F.R. § 112.7(b) provides that where experience indicates a reasonable potential for equipment failure, the SPCC Plan must include a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure. The Facility's then existing SPCC Plan did not include an adequate prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the Facility as a result of each type of major equipment failure, in violation of 40 C.F.R. § 112.7(b).

33. 40 C.F.R. § 112.7(c)(1) requires that appropriate containment, diversionary structures, or equipment be provided to prevent a discharge as described in § 112.1(b). The Facility's then existing SPCC Plan did not completely describe the appropriate containment and/or diversionary structures or equipment in place at the Facility to prevent a discharge from oil-filled operational equipment, nor were the requisite containment and diversionary structures in place at the Facility to prevent a discharge as described in § 112.1(b) from all mobile/portable containers, oil-filled operational equipment, or transfer areas at the facility, in violation of 40 C.F.R. § 112.7(c)(1) and 40 C.F.R. § 112.7(a)(1).

34. 40 C.F.R. § 112.7(h)(1) requires that facility tank car and tank truck loading/unloading racks use a quick drainage system for racks where rack drainage does not flow into a catchment basin or treatment facility designed to handle discharges, and that any containment system be designed to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the facility. The Facility's then existing SPCC Plan did not describe the containment available for the Facility's tank truck loading/unloading rack, nor was containment observed for the loading/unloading rack at the Facility, in violation of 40 C.F.R. § 112.7(h)(1) and 40 C.F.R. § 112.7(a)(1).

35. 40 C.F.R. § 112.7(h)(2) requires that an interlocked warning light or physical barriers, warning signs, wheel chocks, or vehicle brake interlock system in the area adjacent to the loading or unloading rack to prevent vehicles from departing before complete disconnection of flexible or fixed oil transfer lines. The use of these warning systems, signs, or wheel chocks was not observed during the inspection of the Facility, in violation of 40 C.F.R. § 112.7(h)(2).

36. 40 C.F.R. § 112.7(k) requires that the owner or operators of facilities with oil-filled operational equipment provide secondary containment for this equipment pursuant to § 112.7(c), or undertake the alternate requirements of paragraph § 112.7(k)(2), if qualified. The Facility's then existing SPCC Plan did not address the Facility's conformance with either method of compliance for its oil-filled operational equipment, in violation of 40 C.F.R. § 112.7(k) and 40 C.F.R. § 112.7(a)(1).

37. 40 C.F.R. § 112.8(a) requires owners or operators of facilities subject to 40 C.F.R. Part 112 to meet the general requirements for the Plan listed under 40 C.F.R. § 112.7.



38. 40 C.F.R. § 112.8(b)(3) requires that facility drainage systems from undiked areas with a potential for a discharge be designed to flow into ponds, lagoons or catchment basins designed to retain oil or return it to the facility. The Facility's then existing SPCC Plan did not describe each of the undiked areas with a potential for discharge, nor how oil from these areas would have been retained or returned to the facility. In addition, during the inspection, rain water from the Dock #5 area where portable containers of oil were stored was observed travelling over the asphalt, off the property, and into a pond that facility representatives stated discharged to the MWRD. These were violations of 40 C.F.R. § 112.8(b)(3) and 40 C.F.R. § 112.8(a).

39. 40 C.F.R. § 112.8(b)(4) requires that facility drainage systems not engineered as in 40 C.F.R. § 112.8(b)(3) have the final discharge of all ditches inside the facility be equipped with a diversion system that would retain oil in the facility in the event of an uncontrolled discharge. The Facility's then existing SPCC Plan did not adequately describe each of the undiked areas with a potential for discharge, the Facility's drainage system(s), or how oil would otherwise have been retained in the facility in the event of an uncontrolled discharge. In addition, during the inspection, rain water from the Dock #5 area where portable containers of oil were stored was observed travelling over the asphalt, off the property, and into a pond that facility representatives stated discharged to the MWRD. These were violations of 40 C.F.R. § 112.8(b)(4) and 40 C.F.R. § 112.8(a).

40. 40 C.F.R. § 112.8(c)(6) requires, among other things, that the owner or operator of an onshore facility test each above ground container for integrity on a regular schedule, and whenever material repairs are made. The SPCC Plan must include, among other things, the

appropriate qualifications for personnel performing tests and inspections; the frequency and type of testing and inspections, which take into account container size, configuration, and design; as well as the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. The Facility's then existing SPCC Plan did not address all of the required information related to integrity testing, in violation of 40 C.F.R. § 112.8(c)(6) and 40 C.F.R. § 112.8(a).

41. 40 C.F.R. § 112.8(c)(8) requires that the owner or operator of an onshore facility provide each container with one of several options for monitoring liquid levels, and that these sensing devices are regularly tested. The Facility's then existing SPCC Plan did not provide information on how these liquid level sensing requirements are met for each of its containers, in violation of 40 C.F.R. § 112.8(c)(8) and 40 C.F.R. § 112.8(a).

42. 40 C.F.R. § 112.8(c)(11) requires that the owner or operator of an onshore facility position or locate mobile or portable containers to prevent a discharge as described in 40 C.F.R. § 112.1(b), and that a secondary means of containment sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation is provided. The Facility's then existing SPCC Plan did not provide information on how mobile or portable containers would be positioned at the facility, nor the secondary containment available for these containers. In addition, no secondary means of containment for these containers was observed during the inspection, in violation of 40 C.F.R. § 112.8(c)(11) and 40 C.F.R. § 112.8(a).

43. Section 3.0 of Appendix C to 40 C.F.R. Part 112 requires that if a facility does not meet the substantial harm criteria listed in Attachment C-I to this appendix, the owner or

operator shall complete and maintain at the facility the certification form contained in Attachment C-II. At the time of inspection, a completed C-II form was not available at the facility, in violation of Section 3.0 of Appendix C to 40 C.F.R. Part 112.

44. As alleged in the preceding paragraphs, and pursuant to Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$16,000 per day for violations that occurred after January 12, 2009, up to a maximum of \$37,500.

#### **Civil Penalty**

45. Based on an analysis of the factors set forth in Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), and in the Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act, taking into account the facts of this case and information submitted by Respondent, including steps that Respondent has taken to resolve the identified violations, Complainant has determined that an appropriate civil penalty to settle this action is \$14,000. Respondent agrees to pay this amount as a civil penalty.

46. Within 30 days after the effective date of this CAFO, Respondent shall pay the \$14,000 by cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311" and the docket number of this case. If the Respondent sends payment by check, 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

If paying by EFT Respondent shall transfer \$14,000 to:

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

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

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

48. The Respondent shall submit copies of the check (or, in the case of an EFT

transfer, copies of the EFT confirmation) to the following persons:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Joseph Ulfig, P.E. (SC-5J)  
Chemical Emergency Preparedness  
and Prevention Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

John P Steketee  
Associate Regional Counsel (C-14J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

49. Failure by Respondent to pay timely this civil penalty 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 Act, 33 U.S.C.

§1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

### General Provisions

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

51. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

52. This CAFO does not affect Respondent's responsibility to comply with the SPCC Rules and other applicable federal, state and local laws.

53. Respondent certifies that it is now complying at the Facility with the regulations cited above.

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

55. The CAFO does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the 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.

56. If Respondent fails to comply with this CAFO, Respondent waives any rights it may possess in law or equity to challenge the authority of the EPA to bring a civil action in the appropriate United States District Court to compel compliance with this CAFO and/or seek an additional penalty for non-compliance with the CAFO.

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

58. The undersigned representative of each Party to this CAFO certifies that he or she is duly authorized by the Party he or she represents to enter into the terms and bind that Party to them.

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

**In the Matter of: Daubert Chemical Company, Inc.**

**Daubert Chemical Company, Inc., Respondent**

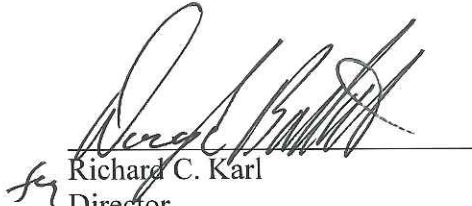
Date: 01-26-2016



Mark D. Pawelski  
Executive Vice-president, Operations  
Daubert Chemical Company, Inc.  
Chicago, Illinois

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

Date: 2/4/2016



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

**In the Matter of: Daubert Chemical Company, Inc.**

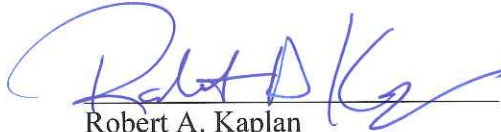
**Docket No. CWA-05-2016-0008**

**FINAL ORDER**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date:

2/5/14



Robert A. Kaplan  
Acting Regional Administrator  
U.S. Environmental Protection Agency  
Region 5



In the matter of: **Daubert Chemical Company, Inc.**  
Docket Number: **CWA-05-2016-0008**

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **CWA-05-2016-0008**, which was filed on *February 8, 2016*, this day in the following manner to the addressees:

Copy by Certified Mail  
to Respondent:

Mark D. Pawelski  
Executive Vice-president, Operations  
Daubert Chemical Company, Inc.  
4700 S. Central Avenue  
Chicago, Illinois 60638

Copy by E-mail to  
Attorney for Complainant:

John P. Steketee  
[steketee.john@epa.gov](mailto:steketee.john@epa.gov)

Copy by E-mail to  
Attorney for Complainant:

Frank H. Hackmann  
[frank.hackmann@dentons.com](mailto:frank.hackmann@dentons.com)

Copy by E-mail to  
Regional Judicial Officer:

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

Dated: *February 8, 2016*

*L Whitehead*

LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S):

7011 1150 0000 2640 6554