

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

**Royal Canin USA Inc.
Rolla, Missouri**

Respondent.

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. CWA-07-2006-0016

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Royal Canin USA, Inc., ("Royal Canin") (Respondent) have agreed to a settlement of this action, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Stipulations

Jurisdiction

1. This is an administrative action for the assessment of Class II civil penalties instituted pursuant to Section 311(b)(6) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA or the Act), 33 U.S.C. § 1321(b)(6), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated Sections 311(j) of the CWA, 33 U.S.C. § 1321(j), and regulations promulgated thereunder.

Parties

3. The Respondent is a producer of dry cat and dog food and located at 1700 Old Bridge School Road, Rolla, Missouri.

4. The authority to take action under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated it to the Director of the Air, RCRA, and Toxics Division of EPA, Region 7 (Complainant).

Statutory and Regulatory Framework

5. 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"

6. 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 EPA his Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities.

7. EPA subsequently promulgated the Spill Prevention Control and Countermeasure Plan (SPCC) regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, which established certain procedures, methods, and requirements upon each owner and 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 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 ("harmful quantity").

8. In promulgating 40 CFR § 110.3, which implements Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), EPA has determined that discharges of harmful quantities include oil discharges that cause either (1) a violation of applicable water quality standards or (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines, or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

Factual Background

9. Respondent is a corporation organized under the laws of Missouri. 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 CFR § 112.2.

10. Respondent is the owner/operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 CFR § 112.2 of an onshore pet food production facility located at 1700 Old Bridge School Road, Rolla, Missouri ("the facility"), near an unnamed tributary to the Little Beaver Creek.

11. The facility has an aggregate above-ground storage capacity greater than 1320 gallons of oil in containers each with a shell capacity of at least 55 gallons.

12. The unnamed tributary and the Little Beaver Creek are navigable waters 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).

13. Respondent is engaged in storing, processing, using, or consuming oil or oil products located at the facility.

14. The facility is a non-transportation-related facility within the meaning of 40 CFR § 112.2 Appendix A, as incorporated by reference within 40 CFR § 112.2.

15. 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 CFR § 112.2.

16. 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").

17. Pursuant to Section 311(j)(1)(C) of the Act, E.O. 12777, and 40 C.F.R. § 112.1 Respondent, as the owner and/or operator of an SPCC-regulated facility, is subject to the SPCC regulations.

Findings of Violation

18. Respondent began operations in approximately 1983. Respondent prepared an SPCC plan for the facility on April 7, 2003.

19. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare an SPCC plan that is in accordance with the requirements of 40 CFR § 112.7 and any other applicable section of the SPCC regulations.

20. EPA determined upon a review of Respondent's SPCC plan for the facility that the plan was not in accordance with the requirements of 40 CFR § 112 by failing to:

- Obtain management approval.
- Provide adequate containment for above ground tanks.
- Provide appropriate containment and/or diversionary structures or equipment for loading/unloading areas.
- Contain a completed Certification of the Applicability of the Substantial Harm Criteria.

21. Respondent's failure to prepare an SPCC plan for the facility in accordance with the requirements of 40 CFR Part 112, as described in Paragraph 20, violated 40 CFR § 112.3.

CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.

2. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order set forth below.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of the Consent Agreement and Final Order.

5. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

6. This Consent Agreement and Final Order addresses all civil administrative claims for the CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any violations of law.

7. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

9. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of \$41,383.00 as set forth in Paragraph 2 of the Final Order and has prepared and implemented an SPCC plan for the facility in accordance with the requirements of 40 CFR Part 112.

10. The effect of settlement described in paragraph 6 above, is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 9 and Respondent's letter dated May 9, 2006.

11. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

FINAL ORDER

A. Payment Procedures

Pursuant to the authority of Section 311 of the CWA, 33 U.S.C. § 1321, and according to the terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Forty One Thousand and Three Hundred Eighty Three Dollars (\$41,383.00).

2. Payment of the penalty shall be due upon the effective date of the Final Order and paid by a cashier's or certified check made payable to the "Environmental Protection Agency" with a reference or notation on the check: Docket CWA-07-2006-0016/Oil Spill Liability Trust Fund – 311. Please remit the payment to:

U.S. Environmental Protection Agency
P.O. Box 371099M
Pittsburgh, PA 15251

Copies of the check shall be mailed to:

Regional Hearing Clerk
U.S. EPA, Region 7
901 North 5th Street
Kansas City, Kansas 66101

and

Kristina Kemp
Assistant Regional Counsel
U.S. EPA, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

B. Parties Bound

4. This Final Order portion of this Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

C. General Provisions

5. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 311 of the CWA, 33 U.S.C. § 1321, and to seek penalties against Respondent or to seek any other remedy allowed by law.

6. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

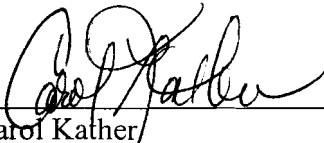
7. This Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), and 40 C.F.R. § 22.45. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

8. Respondent and Complainant shall bear their respective costs and attorney's fees.

9. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

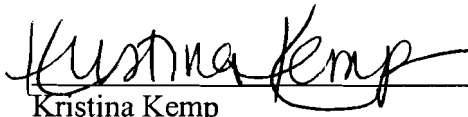
COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

11/28/06
Date



Carol Kather
Acting Director
Air, RCRA and Toxics Division

11/27/06
Date



Kristina Kemp
Assistant Regional Counsel

Consent Agreement and Final Order
Royal Canin USA, Inc.
CWA-07-2006-0016

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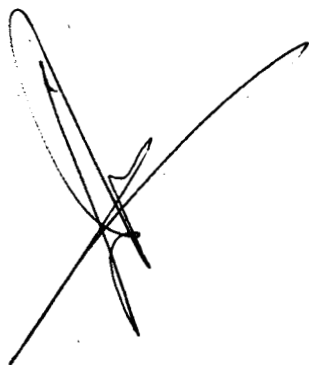
RESPONDENT:
Royal Canin USA, Inc.

11/20/2006
Date

Name FRANCOIS VASERMAN / ROYAL CANIN

Title DIRECTOR OF OPERATION

Address ~~1700~~ 1700 BRIDGE SCHOOL ROAD
ROLLA, MO 65401

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

IT IS SO ORDERED. This Final Order shall become effective immediately.



Robert Patrick
Regional Judicial Officer

Date December 12, 2006

IN THE MATTER OF Royal Canin USA Inc., Respondent
Docket No. CWA-07-2006-0016

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Kristina Kemp
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

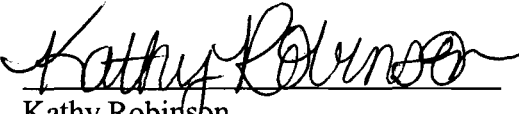
Copy by Certified Mail Return Receipt to:

Robert Shipp, EH&S Manager
Royal Canin
1700 Bridge School Road
Rolla, Missouri 65401

and

Joseph Kellmeyer Esq.
Thompson Coburn
One US Bank Plaza
St. Louis, Missouri 63101

Dated: 12/14/06


Kathy Robinson
Hearing Clerk, Region 7