

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

**BEFORE THE ADMINISTRATOR**

IN THE MATTER OF	)	
	)	
	)	ADMINISTRATIVE ORDER
	)	ON CONSENT
National Feed Commodities, Inc.	)	
	)	
	)	
	)	Docket No. CWA-07-2018-0326
	)	
Respondent.	)	
_____	)	

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), (e) and (m) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1321(c), (e) and (m) related to the National Feed Commodities, Inc. (“Respondent”) facility located at 800 North River Road, Atchison, Kansas 66002 (“Facility”).

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

**PARTIES**

3. The authority to take action under Sections 311(c) and (e) of the CWA, 33 U.S.C. § 1321(c) and (e) is vested in the Administrator of EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated the authority to the Director of the Air and Waste Management Division of EPA, Region 7 (“Complainant”).

4. Respondent is a corporation engaged in producing and distributing animal feed products and is registered and authorized to conduct business in the state of Kansas.

**STATUTORY AND REGULATORY FRAMEWORK**

**Section 311 of the CWA**

5. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), provides for the regulation of onshore facilities to prevent or contain discharges of oil. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), 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.”

6. To implement Section 311(j), 33 U.S.C. § 1321(j), EPA promulgated regulations to prevent oil pollution. These regulations, codified at 40 C.F.R. Part 112, set forth the requirements for the preparation and implementation of Spill Prevention Control and Countermeasure Plans (“SPCC Plans”).

7. 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 drilling, producing, gathering, storing, processing, refining, 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.

8. Sections 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), provides that the President shall issue regulations requiring the owner or operator of “an onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or upon the navigable waters [or] adjoining shorelines” to “submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil.”

9. Section 311(c) of the CWA provides authority, delegated to EPA, to “direct ... private actions to remove the discharge or to mitigate or prevent the threat of the discharge...” of oil. Section 311(e) of the CWA also provides authority, delegated to EPA, to issue “administrative orders that may be necessary to protect the public health and welfare.”

#### **EPA’s FINDINGS OF FACT**

10. Respondent was at all relevant times the “owner or operator,” 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, of the Facility. Additionally, Heckman Management, Inc., blends animal feeds for Respondent at the Facility, and Clark Heckman is an officer of both Respondent National Feed Commodities, Inc., and Heckman Management, Inc.

11. Respondent stores crude glycerin, soybean phosphate, and other assorted dry and liquid ingredients at the Facility for animal feed production.

12. The Facility is adjacent to the Missouri River.

13. The Facility has an estimated above-ground oil storage capacity of greater than 1,320 gallons.

14. On September 8, 2016, EPA representatives inspected, and/or obtained information about the Facility and concluded that the Facility was not in full compliance with the SPCC regulations at 40 C.F.R. Part 112.

15. During EPA’s inspection, EPA documented the following observations of Respondent’s non-compliance with SPCC requirements, including a failure to fully prepare and implement an SPCC Plan, in violation of 40 C.F.R. § 112.3(a):

- a. Respondent failed to provide any of the facility's above-ground storage tanks, totes, or drums with secondary containment, as required by 40 C.F.R. § 112.7(c).
- b. Respondent failed to regularly inspect aboveground valves, piping, and appurtenances to assess their general condition, in violation of 40 C.F.R. § 112.7(d)(4).
- c. Respondent failed to perform or keep record of inspections or tests conducted monthly or periodically, including periodic visual inspections of the storage tanks, containment, pipes, pumps, valves and associated appurtenances, in violation of 40 C.F.R. § 112.7(e).
- d. Respondent failed to conduct training for oil handling personnel on operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and, the contents of the facility SPCC Plan, in violation of 40 C.F.R. § 112.7(f)(1).
- e. Respondent failed to designate a person accountable for discharge prevention, in violation of 40 C.F.R. § 112.7(f)(2).
- f. Respondent failed to conduct annual discharge prevention briefings for oil handling personnel, in violation of 40 C.F.R. § 112.7(f)(3).
- g. Respondent failed to provide sized secondary containment for bulk storage containers, in violation of 40 C.F.R. § 112.12(c)(2).
- h. Respondent failed to conduct any integrity testing of its storage tanks and had no baseline data on each tank's condition, in violation of 40 C.F.R. § 112.12(c)(6).
- i. Respondent failed to provide secondary containment, such as a dike or catchment basin, for portable storage containers, in violation of 40 C.F.R. § 112.12(c)(11).
- j. Additionally, Respondent failed to submit complete and maintain at the facility the Certification of the Applicability of the Substantial Harm Criteria," in violation of 40 C.F.R. § 112.20(e).

### **EPA's CONCLUSIONS OF LAW**

18. 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.

19. The Missouri River is a navigable water of the United States within the meaning of 33 U.S.C. § 1362(7) and 40 C.F.R. § 112.2.

20. Respondent's 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.

21. Respondent's Facility is a "non-transportation-related facility" as defined by Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.

22. Crude glycerin and soy phosphate are forms of oil as defined by Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2.

23. As the owners/operators of a non-transportation-related Facility that, because of its location and storage capacity, could reasonably be expected to cause harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines, Respondent is subject to Section 311(j)(5) of the CWA and the SPCC regulations at 40 C.F.R. Part 112.

24. As evidenced by the absence of compliance by Respondent's Facility with the requirements of 40 C.F.R Part 112, as well as the Facility's proximity to the Missouri River, there exists a substantial threat of a potential "discharge" as defined in Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), and 40 C.F.R. § 112.2, into navigable waters of the United States in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

25. The substantial threat of a potential discharge from the Facility 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.

26. The actions required by this Order are necessary to protect the public health and welfare of the United States, including threats and/or potential threats to 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.

27. The actions required by this Order are in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") and are authorized by EPA pursuant to the authority granted in Section 311(c) and (e) of the CWA, 33 U.S.C. § 1321(c) and (e).

### **ORDER**

28. Based upon the Findings of Fact and Conclusions of Law set forth above, EPA hereby orders and Respondent hereby agrees to comply with all requirements of this Order and the SPCC at 40 C.F.R. Part 112, promulgated under Section 311 of the federal CWA, 33 U.S.C § 1321, and to specifically perform the following actions:

- a. Respondent shall complete a survey and document the contents of all oil storage tanks and mobile containers and/or other tanks or process equipment at the Facility to identify the equipment that are subject to 40 C.F.R. Part 112, and to ascertain present oil storage capacity in accordance and as part of the SPCC submittal required in Paragraph 28c.
  - b. This survey shall identify whether tanks or mobile containers are used to store the following materials, and provide copies of all available analytical data in the possession, custody and/or control of Respondent or Heckman Management, Inc. (that mixes feed at the Facility for Respondent) or Clark Heckman (Secretary of National Feed Commodities, Inc.) that describes the oil/fat content (by percentage of volume) of these materials:
    - i. VegOil4000 (product produced by Respondent for use in the production of animal feed supplements);
    - ii. Soy Phosphate (formerly identified as “Interphase”);
    - iii. Crude glycerin;
    - iv. All other materials that contain oil or fats; and,
    - v. Animal feed supplements produced and/or stored at the Facility.
  - c. By December 1, 2018, Respondent shall prepare and submit an SPCC plan prepared pursuant to all requirements of 40 C.F.R. Part 112 to EPA for EPA’s review, which will include at a minimum both crude glycerin and soy phosphate storage and the product mixing tanks, and the survey required by Paragraphs 28(a) and (b), above. The SPCC Plan shall be signed by Clark Heckman as Secretary of Respondent National Feed Commodities and the person with management approval and authority to implement the Plan. EPA will review and may provide Respondent comments on the submittal. Respondent may remove the materials from the SPCC plan if EPA or the Coast Guard determines that they are not a regulated “oil,” as defined by Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2.
  - d. Respondent shall complete all Facility upgrades and corrective actions necessary to fully comply with the requirements of Section 311 of the federal CWA, 33 U.S.C. § 1321, as well as the requirements of 40 C.F.R. Part 112. Respondent shall submit evidence to EPA (e.g., photographs, work summaries, cost documentation such as work orders, invoices, photographs of decommissioned or dismantled tanks, etc.) by June 1, 2019, to document that all required Facility upgrades have been completed.
29. Respondent shall submit to EPA monthly written progress reports regarding activities towards and until completion of the items in paragraph 28, which may be submitted electronically.



30. Respondent shall send reports to:

Nicole Moran  
AWMD/CORP  
U.S. Environmental Protection Agency - Region 7  
11201 Renner Blvd.  
Lenexa, Kansas 66219

### **MODIFICATIONS**

31. If Respondent seeks permission to modify this Order, Respondent shall submit a written request to EPA for approval, outlining the proposed modification and its basis. Such written request must also be mailed to:

Mark A. Smith, Acting Director  
Air and Waste Management Division  
U.S. Environmental Protection Agency - Region 7  
11201 Renner Blvd.  
Lenexa, Kansas 66219.

### **ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE**

32. Violation of or failure to comply with any of the provisions of the foregoing Order may subject Respondent to civil penalties of up to \$45,268 per day of violation or an amount up to three times the costs incurred by the Oil Spill Liability Trust Fund pursuant to Section 311(b)(7) of the CWA, 33 U.S.C. § 1321(b)(7) and 40 C.F.R. Part 19.

33. If any event delays or prevents, or is expected to delay or prevent, the performance or completion of the actions required by this Consent, Respondent shall notify Nicole Moran at 913-551-7641 or by electronic transmission within four (4) days of Respondent's knowledge such event and shall notify EPA in writing not more than 10 days after Respondent's knowledge of the event. The notice shall describe the expected length of delay or non-completion, the cause(s) of the delay or non-completion, the measures taken or planned to be taken by Respondent to prevent or minimize the delay or non-completion, and the timetable for implementing these measures.

34. A "force majeure event" is defined as an event arising from circumstances beyond Respondent's control that delays or prevents the performance or completion of actions required by this Order, despite Respondent's best efforts to avoid or minimize such delay or non-completion. Force majeure events do not include Respondent's financial inability to perform any obligation under this Order.

35. If EPA determines that the actual or expected delay is attributable to a force majeure event, the time for performance or completion of the actions shall be extended for a period no longer than the delay resulting from the event. EPA will provide any extension in writing to Respondent.

36. If EPA does not agree that the actual or expected delay in performing the actions required by this Order, or the actual or expected non-completion of the actions required by this Order, has been or will be caused by a force majeure event, EPA will notify Respondent in writing of its decision, and any delays in the performance or completion of the upgrades and/or corrective actions shall not be excused.

37. 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. 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 future or past violations of the CWA.

### **EFFECTIVE DATE AND TERMINATION**

38. This Order shall be effective upon receipt of a fully executed copy by the Respondent. The Order may terminate when the obligations in Paragraph 28 have been completed. Respondent may submit a request for termination to EPA stating that the obligation in Paragraph 28 have been completed and the Order will terminate upon written approval of EPA.

### **GENERAL PROVISIONS**

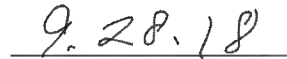
39. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Order. Respondent admits the jurisdictional allegations of this Order and agree not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Order. By entering into this Order on Consent, Respondent (1) consents to and agrees not to contest EPA's authority or jurisdiction to issue and enforce this Section 311(c), (e), and (m) Order on Consent; (2) agrees to undertake all actions required by the terms and conditions of this Order on Consent and (3) consents to be bound by the requirements set forth herein. Respondent also waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Respondent reserves its right to contest the factual and legal conclusions in any other proceeding.

40. The undersigned representative of the Respondent is fully authorized to bind Respondent to the terms and conditions of this Order.

**For the Respondent, National Feed Commodities, Inc.:**



Clark Heckman, Secretary  
National Feed Commodities, Inc.



Date



For the United States Environmental Protection Agency:



Mark Smith  
Acting Director  
Air and Waste Management Division

10/1/18  
Date



Howard Bunch  
Office of Regional Counsel


10/1/18  
Date

**CERTIFICATE OF SERVICE**

I hereby certify that the original and one true and correct copy of the foregoing Administrative Order on Consent was hand delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219; and that true and correct copies were sent by certified mail and/or electronic mail, return receipt requested, to:

National Feed Commodities, Inc.  
c/o Clark Heckman, Registered Agent  
1629 Highway 69  
Atchison, Kansas 66002

on this 4th day of OCTOBER, 2018.

  
\_\_\_\_\_  
Milady Peters  
Paralegal Specialist