

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF

Cargill, Incorporated
2330 Buoy Street
Memphis, Tennessee 38134

Respondent.

CWA SECTION 311 CLASS I
CONSENT AGREEMENT
AND FINAL ORDER
UNDER 40 C.F.R. § 22.13(b)

Docket No. CWA-04-2009-5148(b)

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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 ("Act"), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 4, who has in turn delegated these authorities through the Director of the RCRA Division, to the Chief of the RCRA and OPA Enforcement and Compliance Branch, RCRA Division ("Complainant").

Stipulations

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

2. 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"

3. 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.

4. 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, which established certain procedures, methods and requirements for 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”).

5. In promulgating 40 C.F.R. § 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.

6. Cargill, Incorporated (“Respondent” or “Cargill”), is a foreign corporation authorized to do business in the State of Tennessee with a place of business located at 2330 Buoy Street, Memphis, Tennessee 38134 (“Facility”). The 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.

7. Respondent is the “owner/operator” of an “onshore facility” within the meaning of Section 311(a)(6) and (10) of the Act, 33 U.S.C. § 1321(a)(6) and (10), and 40 C.F.R. § 112.2, which includes a 10,000-gallon railcar used to transfer oil to or from the Facility.

8. The Facility is up gradient of Lake McKellar, which is located less than a tenth of a mile from the Facility.

9. Lake McKellar is a navigable water of the United States within the meaning of 40 C.F.R. § 112.2, as amended at 73 Fed. Reg. 71,944 (November 20, 2008), and Section 502(7) of the Act, 33 U.S.C. § 1362(7).

10. 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.

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

12. 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.

13. 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”).

14. 40 C.F.R. § 112.3(a) requires the owner or operator of an SPCC-regulated facility to prepare and implement an SPCC Plan.

15. Respondent admits the jurisdictional statements contained herein.

Allegations

Complainant alleges, and Respondent neither admits nor denies, that:

16. Cargill began operating the Facility around 1977 after purchasing the Facility from another party.

17. On July 12, 2007, Respondent discharged 3,722 gallons of corn oil, an oil as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 110.1, from its facility into or upon Lake McKellar and its adjoining shorelines in alleged violation of Section 311(b) of the Act, 33 U.S.C. § 1321(b). On October 14, 2008, EPA and Respondent resolved Respondent's alleged violation of Section 311(b) of the Act, 33 U.S.C. § 1321(b), with the entry of a Consent Agreement and Final Order.

18. The release of corn oil on July 12, 2007, prompted an investigation by EPA, including an inspection of the Facility on or about July 24, 2007.

19. EPA issued a Letter of Deficiency on September 21, 2007, related to the Facility inspection by EPA on July 24, 2007.

20. EPA alleges that the Respondent failed to adequately implement Section 10.5 of its SPCC Plan by failing to have an employee perform a walk-around inspection of its rail car to verify that all transfer lines had been disconnected before moving it from the loading area, in violation of 40 C.F.R. § 112.3. EPA also alleged that Cargill failed to re-close the storm water drain valve in the loading and unloading area after the rain event on July 12, 2007, and to ensure

the drains were covered before unloading the railcar on July 12, 2007, as required by its SPCC plan, in violation of 40 C.F.R. § 112.3.

Waiver of Rights

21. Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(i) of the Act, 33U.S.C. § 1321(b)(6)(B)(i), and to appeal any Final Order in this matter under Section 311(b)(6)(G)(i) of the Act, 33 U.S.C. § 1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

22. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this Consent Agreement or the Final Order.

Penalty

23. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of \$10,600.

Payment Terms

24. Respondent consents and agrees to the payment of the civil penalty no later than thirty (30) calendar days after the effective date of the Final Order.

25. Respondent shall make payment of the penalty by a corporate/cashier's check or certified check, by a wire transfer, or on line. If paying by check, the Respondent shall submit a corporate/cashier's check or certified check, payable to "Environmental Protection Agency," and

bearing the notation "OSLTF – 311." Respondent shall reference the facility name and the docket number for this matter on the face of the check, and the check shall be tendered, if by U.S.

Postal Service, to:

United States Environmental Protection Agency
Fines and Penalties, Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000

or if by commercial express delivery service to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If Respondent sends payment by wire transfer, the payment shall be addressed to the Federal Reserve Bank of New York.

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33

33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency "

If Respondent chooses the On Line Payment option, available through the Department of Treasury, this payment option can be accessed from the information below.

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open form and complete required fields.

Respondent shall submit a copy of the payment to the following addressees:

Patricia Bullock
Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and to:

Doug McCurry, Chief
North Enforcement & Compliance Section
RCRA/OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

26. Respondent's failure to pay the penalty assessed by the Final Order in full by its due date 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

27. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

28. The Final Order 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.

29. Payment of the penalty pursuant to this Consent Agreement resolves all of Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein, as well as the violations alleged in the Letter of Deficiency, dated September 21, 2007.

30. The undersigned representative of Respondent hereby certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind Respondent to this Consent Agreement.

31. The following attorney represents EPA in this matter and is authorized to receive service for EPA in the proceeding:

Joan Redleaf Durbin
Associate Regional Counsel
United States Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center,
61 Forsyth Street, SW
Atlanta, Georgia 30303
(404) 562-9544
redleaf-durbin.joan@epa.gov

The following attorney represents Respondent in this matter and is authorized to receive service for Respondent in the proceeding:

Adam G. Sowatzka
King & Spalding, LLP
1180 Peachtree St., N.E.
Atlanta, Georgia 30309
asowatzka@kslaw.com

Effective Date

32. This Consent Agreement and attached Final Order is effective upon the filing of the Final Order with the Regional Hearing Clerk.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF

Cargill, Incorporated
2330 Buoy Street
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Respondent.

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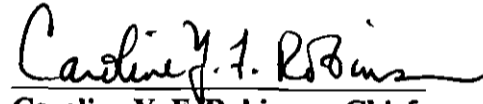
For CARGILL, INCORPORATED

Date: 8/24/09


Kathleen Garrison
Associate Vice President

For U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/10/09


Caroline Y. F. Robinson, Chief
RCRA/OPA Enforcement & Compliance Branch
RCRA Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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FINAL ORDER

Pursuant to Section 311(b)(6) of the Act, 33 U.S.C. §1321(b)(6) and the delegated authority of the undersigned, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation-Termination or Suspension of Permits," codified at 40 C.F.R. Part 22, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties and Allegations by the Complainant are adopted as Findings in this Final Order.

Cargill, Incorporated, the Respondent, is ordered to comply with the terms of the Consent Agreement, Docket No. CWA-04-2009-5148(b).

Date: Sept. 14, 2009

Susan B. Schub
Susan Schub
Regional Judicial Officer

Joan Redleaf Durbin
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street
Atlanta, Georgia 30303

(Via EPA's internal mail)

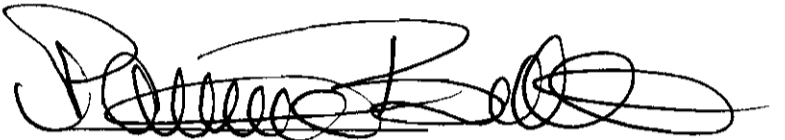
John C. Goodwin
RCRA & OPA Enforcement and Compliance Branch
U.S. EPA, Region 4
61 Forsyth St., S.W.
Atlanta, Georgia 30303

(Via EPA's internal mail)

Adam G. Sowatzka
King & Spalding, LLP
1180 Peachtree St., N.E.
Atlanta, Georgia 30309

(Via Certified Mail)

Dated this 14 day of September 2009.



Ms. Patricia Bullock
Regional Hearing Clerk
U.S. EPA - Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960