



2. The Respondent was 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 a railroad transportation vehicle (“the facility”) that was involved in a release incident at the Cargill’s corn oil plant in Memphis, Tennessee.

3. The facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

4. Lake Mckellar is a navigable water subject to the jurisdiction of Section 311 of the Act as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

5. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

6. For purposes of Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. § 110.3 to include discharges of oil that (1) violate applicable water quality standards or (2) cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

7. Respondent admits the jurisdictional statements contained herein.

### Allegations

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

8. On July 12, 2007, Respondent discharged approximately 3,500 gallons of oil (corn oil) as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2, from its facility into or upon Lake McKellar and/or its adjoining shorelines.

9. The release was caused when a railcar containing corn oil was moved by the Respondent during the unloading process, breaking the unloading hose and allowing the corn oil to be released on the surrounding area and conveyed through a storm-water drainage valve that discharges to Lake McKellar.

10. The Respondent shut off the valve upon discovery of the release allowing much of the release to be contained within secondary containment. However, approximately 3,500 gallons of corn oil was discharged out of the secondary containment and into Lake McKellar and/or its adjoining shorelines.

11. Respondent's July 12, 2007, discharge of oil from its facility caused a sheen upon or discoloration of the surface of Lake McKellar and/or its adjoining shoreline, and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R § 110.3, in violation of Section 311(b)(3) of the Act.

12. On October 31, 2007, EPA sent Respondent a Notice of Technical Deficiencies, addressing Respondent's Federal Response Plan.

13. On January 3, 2008, Respondent provided EPA with additional information regarding its Federal Response Plan.

### **Waiver of Rights**

14. Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), 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.

15. 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, but only to the extent that the purpose and content of such discussion, memorandum or communication is to persuade such official to accept and issue this Consent Agreement or the Final Order.

### **Penalty**

16. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of \$10,000.00.

### **Payment Terms**

Based on the forgoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

17. No later than 30 days after the effective date of the Final Order, the Respondent shall pay the amount of \$10,000.00 by means of a corporate cashier's or certified check, or by electronic funds transfer ("EFT"). If paying by check, the Respondent shall submit a corporate cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311." If the 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 93197-9000

If paying by EFT, the Respondent shall transfer \$10,000.00 to [www.pay.gov](http://www.pay.gov). Enter SFO 1.1 into the “search public forms” field. Open the form and enter the requested information.

18. If paying by check, the Respondent shall note on the penalty payment check the title and docket number of this case. The Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the following people:

Patricia Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 4  
SNAFC  
61 Forsyth Street, SW  
Atlanta, GA 30303

AND

Doug McCurry, Chief  
North Enforcement and Compliance Section  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. Environmental Protection Agency  
Region 4  
SNAFC  
61 Forsyth Street, SW  
Atlanta, GA 30303

19. 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

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

21. 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 there under, 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.

22. Payment of the penalty pursuant to this Consent Agreement fully resolves all of Respondent's liability for federal civil penalties for violations relating to the release incident which occurred on July 12, 2007, including but not limited to the facts stipulated to and alleged herein. This Consent Agreement also resolves any and all civil violations that relate to or arise from Cargill's response to EPA's Section 308 Request dated August 27, 2007, and the Notice of Technical Deficiencies, dated October 31, 2007. Notwithstanding the above, this Consent Agreement does not resolve the three (3) alleged spill prevention, control, and countermeasure ("SPCC") plan set forth in EPA's letter to Cargill dated June 20, 2008.

23. 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.

24. 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](mailto:Redleaf-Durbin.Joan@epa.gov)

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

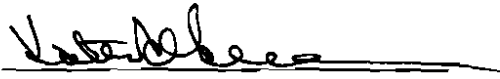
Adam G. Sowatzka  
King & Spalding, LLP  
1180 Peachtree St., N.E.  
Atlanta, Georgia 30309

**Effective Date**

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

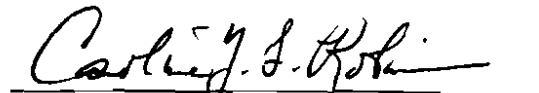
For CARGILL, INCORPORATED

Date: 9/18/08

  
Kathleen Garrison  
Associate Vice President

For U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 10/8/08

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

**FINAL ORDER**

Pursuant to Section 311(b)(6) of the Clean Water 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 foregoing 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, the Respondent, is ordered to comply with the terms of the Consent Agreement, Docket No. CWA-04-2008-5142(b).

Date: 10/10/08

Susan S. Schub  
Susan Schub  
Regional Judicial Officer



CERTIFICATE OF SERVICE

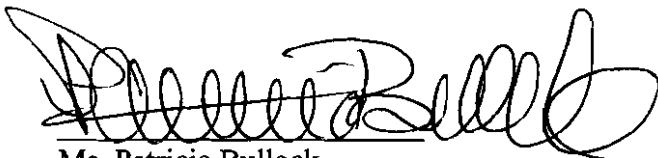
I hereby certify that I have this day served a true and correct copy of the Foregoing Consent Agreement and Final Order, in the matter of Cargill, Docket No. CWA-04-2008-5142(b), on the parties listed below in the manner indicated:

Joan Redleaf Durbin (Via EPA's internal mail)  
Office of Environmental Accountability  
U.S. EPA, Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

John C. Goodwin (Via EPA's internal mail)  
RCRA & OPA Enforcement and Compliance Branch  
U.S. EPA, Region 4  
61 Forsyth St., S.W.  
Atlanta, Georgia 30303

Adam G. Sowatzka (Via Certified Mail)  
King & Spalding, LLP  
1180 Peachtree St., N.E.  
Atlanta, Georgia 30309

Dated this 14 day of October, 2008.



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