

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

**BEFORE THE ADMINISTRATOR**

<b>In the Matter of:</b>	)	COMPLAINT, CONSENT AGREEMENT
	)	AND FINAL ORDER
	)	
National Feed Commodities, Inc.,	)	<b>Docket No. CWA-07-2019-0002</b>
	)	
<b>Respondent.</b>	)	

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The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and National Feed Commodities, Inc. (Respondent) have agreed to a settlement of this action before filing a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2), and 22.18(b)(3) 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), 22.18(b)(2), and 22.18(b)(3).

**COMPLAINT**

Jurisdiction

1. This is an administrative action for the assessment of a Class II civil penalty 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, (Administrative Proceedings Not Governed by Section 554 of the Administrative Procedures Act), 40 C.F.R. Part 22, Subpart I.

2. This Complaint and Consent Agreement/Final Order serves as notice that EPA has reason to believe that Respondent has violated Sections 311(b)(3) and 311(j) of the CWA, 33 U.S.C. §§ 1321(b)(3) and 1321(j), and regulations promulgated thereunder.

Parties

3. The Respondent is National Feed Commodities, Inc., a corporation registered and authorized to conduct business in the state of Kansas. National Feed's registered agent is Mr. Clark Heckman, a corporation registered and authorized to conduct business in the state of Kansas and addressed at 1629 Highway 69, Atchison, Kansas 66002.

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 and Waste Management Division of EPA, Region 7.

#### 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. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil or hazardous substances 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.

7. Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), defines “oil” as “oil of any kind or in any form, including, but not limited to, petroleum [or] fuel oil...”

8. 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 and adjoining shorelines 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 violate applicable water quality standards or 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.

9. EPA promulgated the Spill Prevention Control and Countermeasure (SPCC) regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the CWA, 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”).

10. 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.

## General Allegations

11. A corporation organized under the laws of Kansas, 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.

12. Respondent is the owner and/or 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 facility located at 1629 US Highway 59, Atchison, Kansas 66002 (“Facility”). Respondent is engaged in storing, processing, and distributing “oil” or oil products (soy and assorted vegetable oils and oil products) at the Facility.

13. The Facility is approximately 610 feet to the west of the perennial White Clay Creek, which flows directly into the Missouri River.

14. The Facility has an estimated oil storage capacity of 814,200 gallons.

15. Respondent is engaged in storing animal fats and assorted vegetable oil storage for the purpose of producing and formulating agricultural animal feed products.

16. On or about July 29, 2016, a 20,000-gallon tank containing soybean oil failed and released an estimated 10,000 gallons of soybean oil onto the ground. Portions of the spill traveled east, downgradient, to White Clay Creek. The spill was not reported to the National Response Center (“NRC”) by Respondent.

17. On or about August 9, 2016, Union Pacific Railroad reported a separate, 200-gallon soybean oil spill to the NRC (report # 1155754). The spill traveled from the Facility and discharged into White Clay Creek. Union Pacific Railroad’s report stated that soybean oil was visible in White Clay Creek.

18. On August 17, 2016, Union Pacific Railroad called in a second report to the NRC (report # 1156528) updating the estimated spill quantity to 3,000 gallons. Subsequent estimates by the Kansas Department of Health and Environment (“KDHE”) increased the estimate to 10,000 gallons.

19. On September 8, 2016, due to the spills and subsequent KDHE investigation and an inspection request to EPA, the EPA conducted an SPCC inspection of the facility. 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. EPA’s inspection documented significant non-compliance with the SPCC regulations at the facility. A copy of EPA’s inspection report was transmitted to Respondent in October 2016.

20. Respondent’s Facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

21. Respondent's 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.

22. Respondent's Facility is 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 and "an SPCC-regulated facility." Pursuant to Section 311(j)(1)(C) of the Act, Executive Order 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.

23. The parties commenced negotiations to resolve this matter in October 2017. On October 26, 2017, EPA and Respondent entered into an administrative Order on Consent for Compliance ("October 2017 Order", Docket No. CWA-07-2017-0042) that required the preparation and implementation of a SPCC Plan for the Facility no later than October 15, 2017. Respondent was also required to complete facility upgrades and comply with all requirements of Section 311 by March 1, 2018. On July 16, 2018, EPA received a revised SPCC Plan, that documented the required upgrades were completed, as required by the October 2017 Order. Further negotiations between Respondent and EPA have resulted in this Consent Agreement and Final Order.

### **Alleged Violations**

#### **Count 1: Prohibited Discharge of Oil**

24. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 23 above, as if fully set forth herein.

25. Respondent's July 29, 2016 discharge of oil from the Facility caused a film or sheen upon the surface of White Clay Creek and/or adjoining shorelines, and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R § 110.3, which implements Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4).

26. Respondent's July 29, 2016 discharge of oil from the Facility into White Clay Creek and/or adjoining shorelines violated Section 311 (b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

27. In accordance with Section 311(b)(6)(A)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(A)(ii), EPA may assess a civil penalty to any owner or operator in charge of any onshore facility who fails to comply with Section 311(b)(3) of CWA, 33 U.S.C. § 1321(b)(3).

**Count 2:  
Violations of SPCC Program**

28. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 27 above, as if fully set forth herein.

29. Based on information gathered during EPA's September 2016 Inspection and EPA's review of other available information, until EPA's receipt of the Facility's July 16, 2018 SPCC Plan, Respondent failed to fully prepare and implement an SPCC Plan, as required by 40 C.F.R. 112.3, as follows:

- a. Respondent failed to prepare and implement an SPCC Plan, as required by 40 C.F.R. 112.3.
- b. Respondent had 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).
- c. 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).
- d. 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).
- e. 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).
- f. Respondent failed to conduct annual discharge prevention briefings for oil handling personnel, in violation of 40 C.F.R. § 112.7(f)(3).

30. Respondent's failure to prepare and implement a SPCC plan for the facility in accordance with the requirements of 40 C.F.R. Part 112, as described in Paragraph 30, above, violated 40 C.F.R. § 112.3.

31. In accordance with Section 311(b)(6)(A)(ii) of CWA, 33 U.S.C. § 1321(b)(6)(A)(ii), EPA may assess a civil penalty to any owner or operator in charge of any onshore facility who fails to comply with any regulation issued under Section 311(j) of CWA, 33 U.S.C. § 1321(j).

## CONSENT AGREEMENT

32. Respondent and EPA agree to the terms of this Consent Agreement and Respondent has read this Consent Agreement, finds it reasonable, consents to its issuance and will comply with the terms of the Final Order.

33. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement/Final Order.

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

35. 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 this Consent Agreement/Final Order.

36. Respondent certifies by signing this Consent Agreement that it has prepared and implemented its SPCC plan for the Facility, and to the best of its knowledge, it is presently in compliance at the Facility with the October 2017 Order, the CWA and all regulations promulgated thereunder.

37. Nothing in this Consent Agreement/Final Order shall be construed as a release from any other action under any law and/or regulation administered by EPA. Nothing contained in this Consent Agreement/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.

38. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment. In any such collection, the penalty agreed to herein shall not be subject to review.

39. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement/Final Order.

40. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and that the Agreement can be signed in part and counterpart.

41. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty as specified in Paragraph 47 of the Consent Agreement. Payment of this civil penalty shall resolve all civil and administrative claims for all violations of the CWA specifically alleged in Counts 1 and 2 of this document, through the Effective Date of the Final Order,

below.

42. The effect of the settlement in Paragraph 41, above, is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 36 above.

43. Notwithstanding any other provision of this Consent Agreement/Final Order, EPA reserves the right to enforce the terms of the Consent Agreement/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.

44. With respect to matters not addressed in this Consent Agreement/Final Order, Complainant reserves the right to take enforcement action for violations of the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

45. This Consent Agreement/Final Order shall be presented to the Regional Judicial Officer for execution 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. This Consent Agreement/Final Order shall be effective upon filing of the Final Order by the appropriate Regional Official for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

46. This executed Consent Agreement/Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219.

**Penalty Payment:**

47. Respondent shall pay a civil penalty of \$100,000 within thirty (30) days of the effective date of the Final Order.

Payment shall be by cashier's or certified check made payable to the "Environmental Protection Agency – OSLTF-311" and remitted to:

U.S. EPA  
Fines and Penalties  
P.O. Box 979077  
St. Louis, Missouri 63197-9000.

48. On the payment, Respondent shall reference the Docket Number CWA-07-2019-0002 and **In the matter of National Feed Commodities, Inc.** written on the check. A copy of each check shall also be mailed to:

Regional Hearing Clerk  
United States Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219, and

Howard Bunch  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

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

50. This Consent Agreement/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/Final Order.

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



COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

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Date

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Mark A. Smith  
Acting Director  
Air and Waste Management Division

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Date

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Howard Bunch  
Sr. Assistant Regional Counsel  
Office of Regional Counsel

RESPONDENT:  
NATIONAL FEED COMMODITIES, INC.

Date: 11-7-18

Signature: 

Printed Name: CLARK HECKMAN

Title: Co-owner; Corporate Secretary

**FINAL ORDER**

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), and 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, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Karina Borromeo  
Regional Judicial Officer