

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

BEFORE THE ADMINISTRATOR

In the Matter of:)	COMPLAINT, CONSENT AGREEMENT
)	AND FINAL ORDER
)	
BP Products North America Inc.)	Docket No. CWA-07-2019-0246
Peosta, Iowa)	
)	

Respondent

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and BP Products North America 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 BP Products North America Inc. a corporation engaged in the manufacture and storage of oil products, and is registered and authorized to conduct business in the state of Iowa.

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(b)(3) of the CWA, 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.

6. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2 define “oil” as “oil of any kind or in any form, including, but not limited to, petroleum [or] fuel oil...”

7. Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), authorizes EPA to promulgate a regulation to define what discharges of oil may be harmful to the public health or welfare or environment of the United States. 40 C.F.R. § 110.3 defines such discharges 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.

8. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), 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.”

9. To implement Section 311(j)(1)(C), EPA promulgated regulations to prevent oil pollution at 40 C.F.R. Part 112 that set forth the requirements for the preparation and implementation of Spill Prevention Control and Countermeasure Plans (“SPCC Plans”).

10. 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 gathering, storing, 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. In pertinent part, 40 C.F.R. § 112.8(c)(2) requires that secondary containment for oil storage be sufficiently impervious to contain a spill.

11. Section 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.” The plans required for facilities subject to Section 311(j)(5) are called Facility Response Plans, or “FRPs.”

12. Section 311(c) of the CWA, 33 U.S.C. § 1321(c), provides authority, delegated to EPA, to “remove or arrange for the removal of a discharge, and mitigate or prevent a threat of a discharge...” of oil. Section 311(e) of the CWA, 33 U.S.C. § 1321(e), provides authority, delegated to EPA, to issue “administrative orders that may be necessary to protect the public health and welfare” due to an “actual or threatened discharge of oil . . . from a . . . facility in violation of [Section 311(b) of the CWA]” if “the President determines that there may be an imminent and substantial threat to the public health or welfare.”

General Allegations

13. As a corporation organized under the laws of Iowa, 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.

14. 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 the bulk oil storage facility located at 15393 Old Highway Road, Peosta, Iowa 52068 (“Facility,” also known as the “Dubuque Facility”). Respondent stores various forms of oil, including No.2 Diesel Oil, at the Facility and transports oil to and from the Facility. No. 2 Diesel Oil is a “pollutant” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6). No. 2 Diesel Oil is also an “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.

15. The Facility discharges to an underground culvert, which flows into South Fork Branch 2 approximately 0.3 miles from the Facility. South Fork Branch 2 is tributary to and joins South Fork Catfish Creek approximately 1.5 miles from the Facility. South Fork Catfish Creek is tributary to and joins Catfish Creek approximately 9.4 miles from the Facility.

16. The Facility has an estimated above-ground storage capacity of over 27,000,000 gallons of oil.

17. South Fork Branch 2, South Fork Catfish Creek, and Catfish Creek are navigable waters or tributary to navigable waters of the United States, within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2.

18. 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.

19. Oil storage at the Facility includes “non-transportation-related” “oil storage,” as defined by Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.

20. As the owner and operator of a non-transportation-related Facility that, because of its location and storage capacity, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines, Respondent is subject to both Section 311(j)(1) and (5) of the CWA and the SPCC and FRP regulations set forth at 40 C.F.R. Part 112.

21. On or about August 6, 2018, a spill of No. 2 diesel fuel oil was discovered from a 2,500,000-gallon storage tank (Tank 12) at the Facility that discharged from the Facility by penetrating through the secondary containment of Tank 12, and then flowing to a stormwater outfall into the adjacent South Fork Branch 2 (the “August 6, 2018 spill”).

22. The stormwater outfall referenced above at Respondent’s Facility is a “point source,” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

23. At the time of the August 6, 2018 spill, the Facility did not have a permit authorizing discharges of oil from the stormwater outfall referenced above pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

24. The oil that discharged from the facility reached and caused the observable presence of oil and a sheen in South Fork Branch 2.

25. Following the August 6, 2018 spill, EPA and Iowa Department of Natural Resources (“IDNR”) representatives inspected and/or obtained information about the Facility and provided oversight to Respondent’s response to the August 6, 2018 spill.

26. On August 7, 2018, EPA conducted an inspection at the facility in order to determine compliance with the SPCC regulations of 40 C.F.R. Part 112 and documented that the Respondent was in violation of the requirement of 40 C.F.R. 112.8(c)(2) for secondary containment to be sufficiently impervious to contain a spill.

27. The parties commenced negotiations to resolve this matter in March 2019. EPA and Respondent have also entered into an administrative Order on Consent for Compliance (“August 2019 Order,” Docket No. CWA-07-2019-0247), pursuant to the authority of Sections 309(a)(3) and 311(c) and (e) of the CWA, that requires the evaluation of the integrity of the secondary containment at Respondent’s facility, and repairs and/or upgrades as necessary, based on the results of the required evaluation.

Alleged Violations

**Count 1:
Prohibited Discharge of Oil**

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

29. Respondent's August 6, 2018 discharge of oil from the Facility caused a film or sheen upon the surface South Fork Branch 2 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).

30. Respondent's August 6, 2018 discharge of oil from the Facility into South Fork Branch 2 and/or adjoining shorelines violated Section 311 (b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

31. 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**

32. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 31 above, as if fully set forth herein.

33. Based on information gathered during EPA's August 2018 Inspection and EPA's review of other available information, at the time of the August 2018 spill, Respondent was in violation of the requirement of 40 C.F.R. 112.8(c)(2) for secondary containment to be sufficiently impervious to contain a spill.

34. 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

35. 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.

36. 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.

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

38. 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.

39. Respondent certifies by signing this Consent Agreement that other than the violation for secondary containment currently addressed by the August 2019 Order (Docket No. CWA-07-2019-0247), it has properly 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 August 2019 Order, the CWA and all regulations promulgated thereunder.

40. 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.

41. 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.

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

43. 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.

44. 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 50 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.

45. The effect of the settlement in Paragraph 44, above, is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 39 above.

46. 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.

47. 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.

48. 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.

49. 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:

50. Respondent shall pay a civil penalty of \$71,400 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.

51. On the payment, Respondent shall reference the Docket Number CWA-07-2019-0246 and **BP Products North America 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

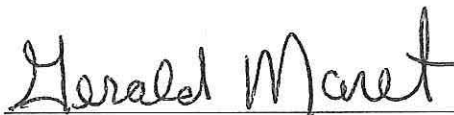
52. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

53. 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.

54. 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.

RESPONDENT:
BP PRODUCTS NORTH AMERICA INC.

Date: Aug. 5, 2019



Gerald Maret
Attorney-in-Fact

BP Products North America Inc.

Registered Agent for BP Products North America Inc.:
The Corporation Trust Incorporated
351 West Camden Street
Baltimore, MD 21201

**COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: _____

Howard C. Bunch
Sr. Assistant Regional Counsel
Office of Regional Counsel

Date: _____

DeAndré Singletary
Acting Director
Enforcement and Compliance Assurance Division

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