

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

BEFORE THE ADMINISTRATOR

In the Matter of)	
)	Docket No. CWA-07-2023-0009
Cedar Falls Utilities,)	
)	COMPLAINT AND
Respondent)	CONSENT AGREEMENT /
)	FINAL ORDER
Proceedings under Section 311(b)(6)(B)(ii))	
of the Clean Water Act, 33 U.S.C.)	
§ 1321(b)(6)(B)(ii))	

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 311(b)(6)(B)(ii) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (“CWA”), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22.

2. Complainant, the United States Environmental Protection Agency Region 7 (“EPA”), and Respondent, Cedar Falls Utilities (“CFU”), have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. The authority to act 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 the authority under Section 311(b)(6) to the Director of the Enforcement and Compliance Division (“Complainant”).

4. This Complaint and Consent Agreement/Final Order (“CAFO”) serves as notice that the EPA has reason to believe that Respondent has violated Section 311 of the CWA, 33 U.S.C. § 1321, and regulations promulgated thereunder.

Statutory and Regulatory Framework

5. The objective of the CWA, 33 U.S.C. § 1251 *et seq.*, is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

6. 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.

7. 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 . . .”

8. Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), authorizes the 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.

9. 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.”

10. To implement Section 311(j)(1)(C), the 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”).

11. 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. *See* 40 C.F.R. § 112.1.

12. 40 C.F.R. § 112.3 requires the owner or operator of an onshore or offshore facility that meets the SPCC criteria to prepare in writing and implement a SPCC Plan in accordance with all applicable sections of 40 C.F.R. Part 112.

13. 40 C.F.R. § 112.7 includes general requirements that apply to all facilities (unless otherwise excluded). 40 C.F.R. §§ 112.8 and 112.12 specify requirements for spill prevention, control, and countermeasures for onshore facilities (excluding production facilities).

Allegations of Fact and Conclusions of Law

14. Respondent is a municipally owned public utility that is authorized to conduct business in the state of Iowa pursuant to Iowa Code Chapter 388. CFU is owned by the citizens of Cedar Falls, Iowa and operated on a not-for-profit basis with governance of the organization delegated by the Cedar Falls, Iowa City Council delegated to a five-member Board of Trustees.

15. Respondent is an association, so is a person within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

16. At all times relevant to this action, Respondent was the owner and/or operator of power generating stations or transformer stations in and/or near Cedar Falls, Iowa, that are “facilities” 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. Specifically, Respondent owns and/or operates oil storage tanks or equipment at the following locations (collectively, the “Facilities”):

a. 1 Utility Parkway (Streeter Station) – The Streeter Station location is Respondent’s primary electricity generating station. Above ground oil storage capacity at this location exceeds 1,320 gallons and includes, but is not limited to, oil contained in transformers, oil-filled barrels, and a centrifuge.

b. West 27th Street location – The 27th Street location is a backup generation station. Oil stored at this location includes transformers and 500,000 and 100,000-gallon above ground bulk storage tanks (“ASTs”).

c. Various substations – Respondent operates at least seven additional substations throughout the service area that have active or stored oil containing transformers onsite. These transformers are oil-filled operational equipment within the meaning of 40 C.F.R. 112.2. Above ground oil storage capacity at these locations exceeds 1,320 gallons.

17. Respondent utilizes a single SPCC plan for all of its oil storage locations.

18. The Streeter Station location is bordered on the south by Dry Run Creek, which flows into the Cedar River. Floor drains inside the facility connect to National Pollutant Discharge Elimination System (“NPDES”) Outfall #1 of the facility, which discharges to Dry Run Creek. The Cedar River is approximately 300 feet away from the facility’s east boundary.

19. The West 27th Street location has surface drainage that flows by ditches approximately ¼ of a mile to the West Branch of the Dry Run Creek, which flows into the Cedar River.

20. The multiple substations each have surface drainage features, including storm drains, that flow into either Dry Run Creek, Black Hawk Creek, or the Cedar River.

21. Dry Run Creek, Black Hawk Creek, and the Cedar River are navigable waters of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

22. Dry Run Creek, Black Hawk Creek, and the Cedar River are identified as impaired by Iowa pursuant to CWA Section 303(d), 33 U.S.C. § 1313(d).

23. Respondent is engaged in storing, processing, using, or consuming oil or oil products located at the Facilities, and was so engaged at all times relevant to this action.

24. The Facilities are “non-transportation-related” facilities within the meaning of Appendix A of 40 C.F.R. § 112, as incorporated by reference within 40 C.F.R. § 112.2.

25. The Facilities are “onshore facilities” 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.

26. The Facilities are non-transportation-related onshore facilities with an aboveground storage capacity of 1,320 gallons or greater which, due to their 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, therefore, are all SPCC-regulated facilities.

27. Pursuant to Section 311(j)(1)(C) of the CWA, Executive Order 12777, and 40 C.F.R. § 112.1, Respondent, as the owner and/or operator of SPCC-regulated facilities, is and was subject to the SPCC regulations at all times relevant to this action.

28. On November 22, 2019, Respondent reported to the National Response Center that 50 gallons of lube oil had entered the NPDES outfall through a facility floor drain at the Streeter Station location. That outfall discharges to Dry Run Creek.

29. On September 10, 2020, a representative of the EPA inspected the Streeter Station location, the West 27th Street location, and multiple substations to determine compliance with the SPCC regulations of 40 C.F.R. Part 112. A copy of the inspection report was transmitted to Respondent on October 13, 2020.

Findings of Violation

Failure to Fully Prepare and Implement an SPCC Plan

30. 40 C.F.R. § 112.3 requires Respondent to fully prepare and implement an SPCC plan. As part of implementing the SPCC plan, Respondent is required to perform routine checks and maintenance on all SPCC regulated facilities to maintain compliance with the CWA.

31. The EPA's inspection documented Respondent's failure to fully prepare and implement an SPCC plan at the Facilities, including the following:

- a. Respondent failed to fully implement the SPCC Plan, in violation of 40 C.F.R. § 112.3(a)(1). In particular, Table 1 of the SPCC Plan stated that the 500,000-gallon AST at the 27th Street Station was to be removed from service by December 2003 and that an oil cooler at Streeter Station was "to be piped to pit," and neither had happened at the time of EPA's inspection.
- b. Respondent's SPCC plan was not signed or stamped as certified by a professional engineer, in violation of 40 C.F.R. § 112.3(d).
- c. Respondent failed to amend its SPCC Plan and implement that amendment within six months of a change at the facility that materially affected the potential for a discharge, in violation of 40 C.F.R. § 112.5(a). In particular, at the time of EPA's inspection, the Plan had not been amended or updated to include additional substations and transformer storage areas or to identify actions to prevent spills similar to the November 2019 spill at Streeter Station.
- d. Respondent failed to complete a review and evaluation of the SPCC plan at least once every five years, in violation of 40 C.F.R. § 112.5(b).

- e. At the time of the inspection, Respondent's SPCC plan did not have the full approval of management at a level of authority to commit the necessary resources to fully implement the Plan, in violation of 40 C.F.R. § 112.7.
- f. Respondent failed to include accurate information in the SPCC Plan's facility diagrams, in violation of Section 1.6 of Respondent's SPCC Plan and 40 C.F.R. § 112.7(a)(3). Omissions include a container of approximately 400 gallons at Streeter Station that forms part of a centrifuge process, a transformer storage area at the 27th Street Station, and additional substations with oil filled operational equipment.
- g. Respondent failed to provide appropriate secondary containment for bulk storage containers and for transfer areas, equipment, and activities at Streeter Station and at the West 27th Street location, in violation of 40 C.F.R. § 112.7(c). Although Respondent met the discharge-history criteria set forth in 40 C.F.R. § 112.7(k)(1) and therefore could elect to implement an alternative to secondary containment for oil-filled operational equipment pursuant to 40 C.F.R. § 112.7(k)(2), Respondent did not implement an inspection or monitoring program to detect oil-filled operational equipment failure and discharges as required by 40 C.F.R. § 112.7(k)(2). Respondent's failure to implement either secondary containment or an alternative for its oil-filled operational equipment violated 40 C.F.R. § 112.7(c).
- h. Respondent failed to keep records of all inspections and tests conducted in accordance with the SPCC plan and signed by the appropriate supervisor or inspector for a period of three years, in violation of 40 C.F.R. § 112.7(e).
- i. Respondent failed to evaluate field-constructed aboveground containers for the potential for brittle fracture or other catastrophic failure when the container undergoes a repair, alteration, reconstruction or change in service or has discharged oil or failed due to brittle fracture failure or other catastrophe, in violation of Section 4.1 of Respondent's SPCC Plan and 40 C.F.R. § 112.7(i).
- j. Respondent failed to restrain drainage from diked storage areas by valves to prevent a discharge into the drainage system or facility effluent treatment system, except where facility systems are designed to control such discharge, and to design drainage from undiked areas with a potential for discharge to flow into ponds, lagoons, or catchment basins to retain oil or return it to a facility, in violation of 40 C.F.R. § 112.8(b). In particular, facility drainages flow through chemical valves that are not accessible, not inspected, and not maintained.
- k. Respondent did not have impervious secondary containment around the 100,000-gallon and the 500,000-gallon ASTs at the 27th Street Station, in violation of Section 6 of the SPCC Plan and 40 C.F.R. § 112.8(c)(2).
- l. Integrity testing for the ASTs was not conducted, in violation of Section 6.5 of Respondent's SPCC Plan and 40 C.F.R. § 112.8(c)(6).
- m. Respondent did not equip each bulk storage container with, and regularly test, a liquid level sensing device in violation of 40 C.F.R. § 112.8(c)(8).

n. Respondent failed to promptly correct visible discharges resulting in a visible loss of oil from the 100,000-gallon AST, and to promptly remove any accumulations of oil in diked areas, in violation of 40 C.F.R. § 112.8(c)(10). At the time of EPA's inspection, the 100,000-gallon AST at the 27th Street Station was leaking an estimated 1 pint per day, with diesel staining and dead vegetation and soil saturation at the base of that tank.

o. Respondent failed to engineer or update each container installation in accordance with good engineering practice to avoid discharges, in violation of 40 C.F.R. § 112.8(c)(8).

p. When piping is not in service or is in standby service for an extended time, Respondent failed to cap the piping or blank-flange the terminal connection at the transfer point and mark it as to origin, in violation of 40 C.F.R. § 112.8(d)(2).

q. Respondent failed to regularly inspect aboveground valves, piping, and appurtenances to assess the general condition of items, such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, locking of valves, and metal surfaces, in violation of 40 C.F.R. § 112.8(d)(4).

32. Respondent's failure to fully prepare and implement its SPCC plan for the Facilities is a violation of 40 C.F.R. § 112.7 and 40 C.F.R. § 112.3.

Consent Agreement

General Provisions

33. Respondent and the EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of this CAFO.

34. 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 any portion of this CAFO.

35. Respondent and Complainant agree to bear their own costs and attorney's fees incurred as a result of this action.

36. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a civil penalty of \$79,500.89, as set forth in the Penalty section below.

37. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

38. Respondent neither admits nor denies the factual allegations asserted above by the EPA.

39. Respondent certifies by the signing of this CAFO that Respondent is in compliance with the terms of the Administrative Order on Consent (Docket No. CWA-07-2023-0063).

40. The effect of settlement is conditional upon the accuracy of the Respondent's representations to the EPA in this CAFO.

Reservation of Rights

41. This CAFO addresses all civil and administrative claims for the CWA violations alleged above. With respect to matters not addressed in this CAFO, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

42. Nothing contained in this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

43. Notwithstanding any other provision of this CAFO, the EPA reserves the right to enforce the terms of this CAFO by initiating a judicial or administrative action pursuant to 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.

Penalty

44. Respondent agrees to pay a civil penalty of **Seventy-Nine Thousand, Five Hundred Dollars and Eighty-Nine Cents (\$79,500.89)** pursuant to the authority of Section 311 of the CWA, 33 U.S.C. § 1321, within thirty (30) days of the Effective Date of this CAFO.

45. The payment of penalties must reference docket number CWA-07-2023-0009 and be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

46. Copies of the checks or verification of another payment method for the penalty payments remitted shall be emailed to:

Natasha Goss
Attorney Advisor
U.S. Environmental Protection Agency Region 7
goss.natasha@epa.gov

and

Regional Hearing Clerk
U.S. Environmental Protection Agency Region 7
r7_hearing_clerk_filings@epa.gov.

47. Should the civil penalty not be paid as provided above, 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.

48. Respondent understands that its failure to timely pay any portion of the civil penalty described herein may result in the commencement of a civil action in the United States District Court for the Northern District of Iowa to recover the full remaining balance, along with penalties and accumulated interest.

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

Signatories

50. The undersigned for each party has the authority to bind each respective party to the terms and conditions of this CAFO. The CAFO may be signed in part and counterpart by each party.

Parties Bound

51. This CAFO 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 CAFO.

Definitions

52. Terms used in this order that are defined in the CWA or EPA regulations promulgated under the CWA have the meanings assigned to them in the CWA or those regulations, unless otherwise provided in this Order.

Executed Agreement Filed

53. This executed Complaint and CAFO shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Electronic Service

54. Respondent consents to receiving the filed CAFO electronically at the following email address: gpeters@howardandhoward.com.

For the Respondent, Cedar Falls Utilities:

Signature: 

Date: 06/26/2023

Name: Steven E. Bernard

Title: General Manager/CEO

For the Complainant, U.S. Environmental Protection Agency Region 7:

David Cozad
Director
Enforcement and Compliance Assurance Division

Natasha Goss
Attorney-Advisor
Office of Regional Counsel

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

Certificate of Service

I certify that on the date noted below I delivered a true and correct copy of this Consent Agreement and Final Order by electronic mail, to:

For Complainant:

Natasha Goss
Office of Regional Counsel
U.S. Environmental Protection Agency Region 7
goss.natasha@epa.gov

Mark Aaron
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 7
aaron.mark@epa.gov

For Respondent:

Gary A. Peters, Counsel for Cedar Falls Utilities
Howard & Howard
450 W 4th St
Royal Oak, MI 48067
gpeters@howardandhoward.com

Date

Signature