

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
P: (518) 357-2048 | F: (518) 357-2087
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CERTIFIED - RETURN RECEIPT REQUESTED
7015 0640 0005 8292 9822

July 11, 2016

Kevin M. Young
Young/Sommer LLC
Executive Woods
Five Palisades Drive
Albany, NY 12205

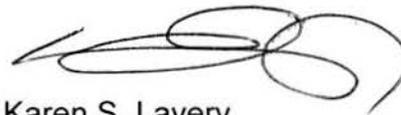
Re: Order on Consent
R4-2012-0615-49
Cargill, Incorporated

Dear Mr. Young:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$36,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: G. McPherson
C. Valenty, ECO



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of Environmental Conservation Law,
Articles 17 and 19

Order on Consent
File No. R4-2012-0615-49

-by-

Cargill, Incorporated
Port of Albany
100 Grain Street
Albany, NY 12202

Respondent

WHEREAS:

Jurisdiction

1. The Department of Environmental Conservation (“Department”) is an agency of the State charged with jurisdiction over the protection of water quality of the State pursuant to Article 17 of the ECL and the rules and regulations promulgated thereto.
2. New York State Department of Environmental Conservation has administrative jurisdiction to safeguard the air resources of the state pursuant to ECL Article 19.

Facts

3. Respondent, Cargill, Incorporated, owns operates a company which is an international producer and marketer of food, agricultural, financial and industrial products and services located at the Port of Albany, 100 Grain Street, Albany, New York (“facility”).
4. Respondent is an owner and operator of a grain elevator at the Port of Albany that receives, stores and ships grain. The facility consists of several elevators for storage and equipment (tunnel belts, elevator legs and conveyors) necessary for the transfer of grain. A grain elevator has been operating at the Port of Albany for over 80 years. The facility uses scales to ensure the amount of grain received and delivered is known and employs seven fabric filters to collect grain that might otherwise be lost during loading, transfer and unloading.
5. During the course of the year, grain is delivered to the facility by truck and rail and there are typically two to four grain shipments with a total throughput of between 6,000,000 bushels to 15,000,000 bushels.

6. During 2012, Respondent had a significant inventory of soft red winter wheat; due to market conditions, the wheat had been stored for approximately four years. Due to its age, the soft red winter wheat was dryer than normal wheat and thus had a greater tendency to be released during transfer. In 2012, Respondent loaded ships with the soft red winter wheat on April 26, 2012, May 14-17, 2012, and June 7, 2012. On April 26, 2012, May 14, 2012, May 17, 2012 and June 7, 2012, Department staff inspected the site. On each occasion, Department staff observed fugitive wheat dust emanating from the process of Marine shipping being loaded.

7. In order to reduce the potential for the release of grain during the loading of Marine vessels, Respondent alleges that it has implemented the following best management practices; (i) the elevator operator request the ship to close one half of the hold during loading; (ii) the elevator operator runs at a reduced throughput rate; (iii) the elevator operator keeps the PECO spout as low as possible during loading; and (iv) the elevator operator shut off the belt while the PECO is being moved.

8. Also, in order to reduce the potential for the release of grain during loading a marine vessel, Respondent alleges that it has retained an independent engineering firm to conduct an engineering study to identify opportunities for reducing the loss of product during loading. The engineering control options identified by the engineer were very limited and not necessary implementable at this facility. Respondent determined that the control alternative with the most certain positive impact was the addition of soybean oil on all grain received at the facility

9. On May 14, 2012, Respondent alleges that it was loading a ship with grain when the fabric filter became plugged due to a malfunctioning plug sensor. Respondent alleges that its staff shut down the system and ceased loading the ship. Respondent alleges that a significant amount of soft red winter wheat was lost when Respondent's employees attempted to unplug the system. After the incident, Respondent alleges that it took steps to train employees on alternative methods to address similar system plugs should they occur again in the future. In addition, Respondent alleges that it has taken actions to check all sensors on the dust collection system and replace any malfunction sensors, as well as secured the gate at the bottom of the system to prevent it from opening automatically.

10. On June 7, 2012, Respondent alleges that it was loading its third ship of the year and at the time of loading, Respondent's supervisory team was monitoring loading operations and observed dust coming from the underfoot of the reclaim system. Respondent alleges that as soon as soon as it was observed, the team investigated the source, suspended loading operations, and repaired the equipment before resuming operations.

11. On April 26, 2012, May 14, 2012, May 17, 2012, and June 7, 2012, Department staff inspected the site.

First Violation

12. On May 14, 2012, Department staff observed wheat dust coming from the bottom of the air pollution control device “cyclone” located adjacent to the marine shipping vessel.
13. On May 17, 2012 and June 7, 2012, Department staff observed wheat dust emanating from the hold of the marine shipping vessel while the vessel was being loaded. The wheat dust was not being controlled by the air pollution collection device.
14. On June 7, 2012, Department staff observed wheat dust coming from the bottom of the air pollution control device “baghouse” located adjacent to the silos.
15. Regulations at 6 NYCRR 200.7 provide that *“any person who owns or operates an air contamination source which is equipped with an emission control device shall operate such device and keep it in a satisfactory state of maintenance and repair in accordance with ordinary and necessary practices, standards and procedures, inclusive of manufacturer’s specifications, required to operate such device effectively.”*
16. Respondent violated regulations at 6 NYCRR 200.7 by failing to properly operate and maintain its air pollution collection device.

Second Violation

17. On May 14, 2012, Department staff observed wheat dust coming from the bottom of the air pollution control device (“cyclone”).
18. On June 7, 2012, Department staff observed wheat dust coming from the bottom of the air pollution control device (“baghouse”).
19. Regulations at 6 NYCRR 201-1.7 provide that *“where practical, any person who owns or operates an air contamination source shall recycle or salvage air contaminants collected in an air cleaning device according to the requirements of this Title.”*
20. Respondent violated regulations at 6 NYCRR 201-1.7 by failing to properly recycle air contaminants from its air contamination sources.

Third Violation

21. On May 14, 2012 and June 7, 2012, Department staff observed wheat dust coming from the bottom of the air pollution control device “cyclone” on May 14, 2012 and from the “baghouse” on June 7, 2012. Containments were being reintroduced into the atmosphere uncontrolled.

22. Regulations at 6 NYCRR 201-1.8 provide that *“no person shall unnecessarily remove, handle, or cause to be handled, collected air contaminants from an air cleaning device for recycling, salvage or disposal in a manner that would reintroduce them to the outdoor atmosphere.”*

23. Respondent violated regulations at 6 NYCRR 201-1.8 by failing to control the containments which were being reintroduced into the atmosphere uncontrolled.

Fourth Violation

24. On April 26, 2012, May 14, 2012, May 17, 2012, and June 7, 2012, Department staff observed fugitive wheat dust emanating from the process of marine shipping vessels being loaded. Fugitive wheat dust was being introduced into the atmosphere.

25. Regulations at 6 NYCRR 211.1 provide that *“no person shall cause or allow emissions of air contaminants to the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life or property. Notwithstanding the existence of specific air quality standards or emission limits, this prohibition applies, but is not limited to, any particulate, fume, gas, mist, odor, smoke, vapor, pollen, toxic or deleterious emission, either alone or in combination with other.”*

26. Respondent violated regulations at 6 NYCRR 211.1 by allowing fugitive wheat dust to be introduced into the atmosphere.

Fifth Violation

27. On May 14, 2012, a Department engineer certified in performing visual Method 9 opacity observations, observed wheat dust emissions coming from the bottom of the air pollution control device “cyclone” located adjacent to the marine shipping vessel.

28. On June 7, 2012, a Department engineer observed wheat dust emissions coming from the bottom of the grain feed drop and dust collection point above a hold on a marine shipping vessel.

29. On both occasions, the Department engineer observed wheat emissions that completely obscured the background for parts of six minutes and slightly dissipated below 100% but remained within a range of 80% to 100% opacity for the remainder of the six minute period. The Department engineer did not take six minutes of continuous 15 section readings because of the very high opacity readings that continued in excess of six minutes.

30. Regulations at 6 NYCRR 211.2 provide that *“except as permitted by a specific part of this Subchapter and for open fires for which a restricted burning permit has been issued, no person shall cause or allow any air contamination source to emit any material having an opacity equal to or greater than 20 percent (six minute average) except for one continuous six-minute period per hour of not more than 57 percent opacity.”*

31. The May 14, 2012 and June 7, 2012 Department engineer opacity observations are credible evidence that the fugitive wheat dust violated regulations at 6 NYCRR 211.2.

Civil Penalty

32. Regulations at ECL Section 71-1929 provides for a civil penalty of up to \$37,500 per day for a violation of any provision of Titles 1 through 11 inclusive and title 19 of Article 17, or the rules, regulations, orders or determinations of the Commissioner promulgated thereto. Injunctive relief is also available.

33. ECL Section 71-2103(1) provides that: ... *“any person who violates any provision of article nineteen or any code, rule or regulation which was promulgated pursuant thereto;... shall be liable, in the case of a first violation, for a penalty not less than three hundred seventy-five dollars nor more than fifteen thousand dollars for said violation and an additional penalty of not to exceed fifteen thousand dollars for each day during which such violation continues. In addition thereto, such person may be enjoined from continuing such violation as hereinafter provided.”*

Waiver of Hearing

34. Respondent has affirmatively waived its right to notice and hearing in the manner provided by law, and has consented to the issuing and entering of this Order and agrees to be bound by the terms, provisions and conditions contained herein.

NOW, having considered this matter and being duly advised, it is **ORDERED** that:

I. Civil Penalty

With respect of the aforesaid violations, a civil penalty in the amount of THIRTY SIX THOUSAND DOLLARS (\$36,000) is assessed against the Respondent for the above violations. The penalty is due with the return of the signed and notarized Order made payable to the Department of Environmental Conservation by bank check.

II. Indemnification

Respondent shall indemnify and hold harmless New York State, DEC, and any of their representatives, employees or contractors for all claims, actions, damages, and costs of any name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions of this Order by Respondent, their employees, contractors, servants, agents, successors or assigns.

III. Other Remedies

Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting the following: (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that DEC may have against anyone other than Respondent; (2) DEC's right to enforce, administratively or otherwise, the terms, provisions and conditions of this Order against Respondent, its employees, servants, agents, successors and assigns in the event that Respondent shall be in breach of the provisions hereof, and to subject Respondent to penalties for such violations, or for other violations of the ECL; and (3) the Respondent's right to challenge any such action by the Department, whether by administrative hearing or otherwise, to the extent otherwise permitted by law or this Order on Consent.

IV. Entire Agreement; Modification

This Order constitutes the entire agreement of the parties, and no provision of the agreement shall be deemed waived or otherwise modified except as is specifically set forth in a writing executed by the Commissioner or Regional Director of DEC indicating an intent to modify this Order.

V. Effective Date

The effective date of this Order shall be the date it is signed by the Regional Director.

VI. Binding Effect

The provisions of this Order shall be deemed to bind Respondent, its officers, directors, agents, employees, contractors, successors and assigns, and all persons, firms and corporations acting under or for it.

VII. Reports

All reports and submissions herein required shall be made to the Region 4 Headquarters, New York State Department of Environmental Conservation, 1130 North Westcott Road Schenectady, New York, 12306, Att: Regional Engineer.

VIII. Inspections

For the purpose of insuring compliance with this Order, duly authorized representatives of this Department shall be permitted access to the site in question during reasonable hours, in order to inspect and/or require such tests as may be deemed necessary to determine the status of the Respondents compliance with this Order.

IX. Summary Abatement

The terms of this Order shall not be construed to prohibit the Commissioner of his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

X. Termination of Order on Consent

This Order on Consent shall terminate one year after the effective date of this Order on Consent.

XI. Third Party

This Order shall not create any presumption of law or fact that shall inure to the benefit of any person other than the State, Department or Respondent.

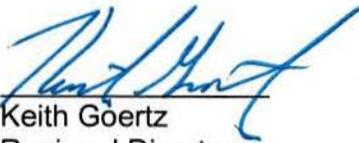
XII. Reservations

Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affect Respondent's rights to assert all available defenses to any claims, actions, proceedings, suits, causes of actions, audits, demands made or commenced by the State or the Department except as to violations contained in this Order.

DATED: July 11, 2016
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:


Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its right to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Cargill, Incorporated

SIGNED: Ray Dunlop

TITLE: Vice President

DATE: June 29, 2016

STATE OF MN

COUNTY OF Hennepin ss.:

On the 16th day of JUNE in the year 2016 before me, the undersigned, a Notary Public in and for the State, personally appeared Ray Dunlop personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]
Notary Public

Qualified in the County of:
My Commission Expires:

