

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BLVD.  
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	Docket No. CWA-07-2015-0084
Loveland Products, Inc.	)	
Fairbury, Nebraska	)	COMPLAINT AND
Respondent	)	CONSENT AGREEMENT/
	)	FINAL ORDER
	)	
Proceedings under Section 309(g) of the	)	
Clean Water Act, 33 U.S.C. § 1319(g)	)	
_____	)	

**COMPLAINT**

**Jurisdiction**

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), 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, Loveland Products, Inc., 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. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that the current owner of the site located at 56906 Hwy. 8, Fairbury, Nebraska, 68352, Respondent, Loveland Products, Inc., and a former owner/operator of the site, Agrium Advanced Technologies, Inc., violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and regulations promulgated thereunder.

**Parties**

4. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), 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

309(g) to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7 (collectively referred to as the "Complainant").

5. Loveland Products, Inc. ("Loveland" or "Respondent"), is and was at all relevant times a foreign corporation authorized under the laws of the State of Nebraska to conduct business in the State, and a "person" as defined by Section 502(5) of CWA, 33 U.S.C. § 1362(5).

#### **Statutory and Regulatory Framework**

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA, provides that pollutants may be discharged in accordance with the terms of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to that Section.

7. The CWA prohibits the "discharge" of "pollutants" from a "point source" into a "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

#### **Stormwater**

8. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater. Section 402(p) of the CWA requires, in part, that a discharge of stormwater associated with an industrial activity must conform with the requirements of a NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

9. Pursuant to Section 402(p) of the CWA, the EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

10. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

11. 40 C.F.R. § 122.26(b)(14)(ii) defines "stormwater discharge associated with industrial activity," in part, as discharges from facilities classified as Standard Industrial Classification 2819 (Industrial Inorganic Chemicals).

12. The Nebraska Department of Environmental Quality ("NDEQ") is the state agency with the authority to administer the federal NPDES program in Nebraska pursuant to Section 402 of the CWA. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

13. The NDEQ issued and implemented NPDES General Permit No. 1 for stormwater discharges associated with industrial activity. The most recent 5-year permit has an effective

date of October 1, 2012, and an expiration date of October 1, 2017, with previous 5-year permits having been issued in 1997, 2002 and 2007. The relevant provisions of each permit, as reissued, are substantially the same.

14. Any individual seeking coverage under NPDES General Permit No. 1 is required to submit a Notice of Intent ("NOI") to the NDEQ in accordance with the requirements of Part II.C of the Permit. As required by Section III.C.1, a Stormwater Pollution Prevention Plan ("SWPPP"), which includes at least the minimum requirements set forth in Section III.C.4 of the Permit, must be completed and maintained on site before the NOI is submitted to the NDEQ and fully implemented concurrently with operations at the facility.

#### **EPA's General Allegations**

15. Agrium Advanced Technologies, Inc., owned and operated a facility located at 56906 Hwy. 8, Fairbury, Nebraska 68352 ("Facility"), operating under SIC code 2819. On or about November 2014, Loveland acquired full ownership, operation and responsibility of the Facility from Agrium and, as a result of operational changes, the Facility now operates under SIC code 2875.

16. For purposes of this Consent Agreement and Final Order, Respondent is and was at all times relevant to this action the owners and/or operators of the Facility.

17. Stormwater, snow melt, surface drainage and runoff water leave Respondent's Facility and discharge to Brawner Creek, then to the Little Blue River.

18. The runoff and drainage from Respondent's Facility is "stormwater" as defined by 40 C.F.R. § 122.26(b)(13).

19. Stormwater contains "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

20. The Facility has "stormwater discharges associated with industrial activity" as defined by 40 C.F.R. § 122.26(b)(14)(x), and is a "point source" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

21. Brawner Creek and the Little Blue River identified in Paragraph 17, above, are each a "navigable water" as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

22. Stormwater runoff from Respondent's industrial activity results in the addition of pollutants from a point source to navigable waters, and thus is the "discharge of a pollutant" as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

23. Respondent's discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(ii), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

24. The NDEQ issued coverage under NPDES Permit No. NE0138347 to the Facility's previous owner, International Mineral Technologies, LLC, effective April 1, 2010, with an expiration date of March 31, 2015. On August 2, 2011, the NDEQ transferred the permit to Agrium Advanced Technologies, Inc., and Loveland Products, Inc.

25. On or about October 1, 2014, Respondent filed an application for renewal of the Permit. The 2010 Permit continues in effect until a new Permit is issued.

26. The Permit governs stormwater discharges at the Facility associated with industrial activity, including facilities under Standard Industrial Classification (SIC) 28, which includes the SIC code applicable to Respondent's Facility.

27. Respondent has operated under the Permit at all times relevant to this Order.

28. On or about September 24, 2014, the EPA performed an Industrial Stormwater Compliance Evaluation Inspection ("Inspection") of Respondent's facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent's compliance with its Permit and the CWA.

29. During the Inspection, the EPA inspector reviewed records related to the Permit, including the Storm Water Pollution Prevention Plan ("SWPPP"), the inspection and employee training records, and observed the facility, the stormwater outfalls and the receiving stream.

30. At or near the conclusion of the Inspection, the EPA inspector summarized his findings in an exit interview with the Facility's representatives. Following the inspection, the inspector completed a report, dated December 10, 2014, that includes both in-field observations and review of discharge monitoring report ("DMR") results. A copy of the inspection report was sent to Respondent by letter dated March 11, 2015.

### **EPA's Specific Allegations**

#### **Count 1**

#### **Discharge During Non-Storm Events**

31. The allegations stated in Paragraphs 1 through 30 above are re-alleged and incorporated herein by reference.

32. Part I of Respondent's Permit authorizes storm water discharges associated with industrial activity from Outfalls 001, 002 and 003 as described in the application for the Permit. Only discharges specifically identified in the Permit are authorized; all other discharges are prohibited.

33. During the Inspection, the EPA inspector observed a discharge from Outfall 003 (also known as Outfall OU03). The discharge was not occurring as a result of a storm event, but

rather appeared to be the result of structural or design problems at the outfall allowing continued discharges not associated with storm events.

34. Review of Respondent's DMRs for Outfall 003 reveal that May 2015 discharges from Outfall 003 occurred at a time not associated with a rainfall event.

35. Respondent's discharge from Outfall 003 at times not associated with a storm event are violations of the terms and conditions of Respondent's Permit, and as such, are violations of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p).

**Count 2  
Discharges in Violation of Effluent Limits**

36. The allegations stated in Paragraphs 1 through 35 above are re-alleged and incorporated herein by reference.

37. Part III.C. of Respondent's Permit sets forth the monitoring requirements and effluent limitations for Outfall 003. Pollutants with monthly average and/or daily maximum limitation identified in the Permit include Cadmium, Copper, Lead, Nickel and Zinc.

38. Review of Respondent's DMRs for Outfall 003 reveal the discharges from Outfall 003 violated the Permit limits for one or more of the monthly average and/or daily maximum pollutant limitations identified in Paragraph 37 above during the months of May, August and November 2013, June, September and October 2014, and June and September 2015.

39. Each of Respondent's discharges that exceeded the effluent limitations set forth in the Permit is a violation of the terms and conditions of Respondent's Permit, and as such, is a violation of Section 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p).

**Count 3  
Failure to Use Approved Sampling/Analysis Methods**

40. The allegations stated in Paragraphs 1 through 39 above are re-alleged and incorporated herein by reference.

41. Paragraph C.3 of Appendix A of Respondent's Permit requires that all monitoring must be conducted according to test procedures approved in NDEQ Title 119, Chapter 27 002, which references the EPA's monitoring and analysis procedures at 40 C.F.R. Part 136.

42. 40 C.F.R. § 136.3, Table 11, requires that all samples for pH (Hydrogen Ion) be analyzed within 15 minutes of sample collection.

43. During the Inspection, the EPA inspector interviewed Respondent's personnel and reviewed Respondent's laboratory procedures and determined that Respondent failed to analyze pH samples within 15 minutes of collection, as required by the Permit and 40 C.F.R. Part 136.

44. Respondent's failure to analyze pH samples within 15 minutes of collection is a violation of the terms and conditions of Respondent's Permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p).

**Count 4  
Failure to Update SWPPP**

45. The allegations stated in Paragraphs 1 through 44 above are re-alleged and incorporated herein by reference.

46. Part II.D. of Respondent's Permit requires the SWPPP to be reviewed at least annually to ensure its effectiveness in minimizing the discharge of pollutants, and further requires the SWPPP to be updated and necessary changes implemented if, among other things, the results of facility inspections indicate deficiencies or the need for changes.

47. Paragraph D.9.m of Appendix A of Respondent's Permit requires the permittee to submit written notice to NDEQ, within 7 days of becoming aware of any permit noncompliance, a description of the noncompliance and its cause and the steps taken to reduce, eliminate or prevent the recurrence of the noncompliance.

48. Review of Respondent's SWPPP, the results of effluent monitoring and annual inspection reports through the date of the EPA's inspection, and review of Respondent's DMRs and other notices to NDEQ reveal that despite numerous and continuing effluent violations inferring that Respondent's stormwater controls were deficient, allowing continued permit violations, Respondent failed to inform the NDEQ of any steps they planned to take to reduce, eliminate or prevent the noncompliance and failed to update or revise the SWPPP as required by the Permit.

49. Respondent's failure to update the SWPPP to address deficiencies and continuing discharges of pollutants in violation of the Permit is a violation of the terms and conditions Respondent's Permit, and as such, is a violation of Section 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p).

50. As alleged in the preceding Counts 1 through 4, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$187,500.



**CONSENT AGREEMENT**

51. Respondent and the EPA agree to the terms of this Consent Agreement/Final Order.
52. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement/Final Order.
53. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by the EPA in this Complaint and Consent Agreement/Final Order.
54. For the purposes of this proceeding, Respondent waives its right to contest any issue of fact or law set forth above. Further, Respondent waives its right to appeal the proposed Final Order accompanying this Consent Agreement.
55. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.
56. The undersigned representative(s) of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.
57. Respondent understands and agrees that 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.
58. Respondent certifies by the signing of this Consent Agreement/Final Order that to the best of its knowledge, Respondent's Facility is in current compliance with NPDES Permit No. NE0138347, and Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and applicable regulations.

**Penalty Payment**

59. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of One Hundred Forty-Five Thousand Dollars (\$145,000) pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to be paid in full no later than 30 days after the effective date of this Consent Agreement/Final Order as set forth below.
60. The payment of penalties must reference docket number "CWA-07-2015-0084" and be remitted using one of the payment methods specified in Appendix A to this Order.

61. Copies of the checks or verification of another payment method for the penalty payments remitted as directed by above, shall be mailed to:

Kathy Robinson  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

and to

Patricia Gillispie Miller  
Senior Counsel  
U.S. Environmental Protection Agency – Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

62. Respondent agrees that 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.

63. Respondent understands that, pursuant to 40 C.F.R. § 13.18, its failure to make any payment according to the above schedule will automatically accelerate the debt which will become due and owing in full, immediately. Interest on any late payment will be assessed at the annual interest rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs or interest.

#### **Effect of Settlement and Reservation of Rights**

64. Respondent's payment of the entire civil penalty pursuant to this Consent Agreement/Final Order resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for violations alleged in this Complaint and Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

65. The effect of settlement described above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in Paragraph 58 of this Consent Agreement/Final Order.

66. 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.



67. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

68. With respect to matters not addressed in this Consent Agreement/Final Order, 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.

### **General Provisions**

69. The Parties acknowledge that this Consent Agreement/Final Order is subject to the public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

70. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after entry by the authorized Regional official and upon filing with the Regional Hearing Clerk U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

71. The State of Nebraska has been provided an opportunity to consult with Complainant regarding this matter in accordance with the requirements of 40 C.F.R. § 22.38(b) and Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

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

73. Respondent and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart.

**For the Complainant, United States Environmental Protection Agency, Region 7:**

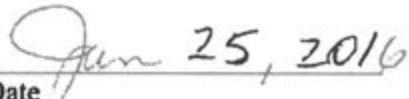
\_\_\_\_\_  
Date

\_\_\_\_\_  
Karen A. Flourney  
Director  
Water, Wetlands and Pesticides Division

\_\_\_\_\_  
Patricia Gillispie Miller  
Senior Counsel  
Office of Regional Counsel

**For the Respondent, Loveland Products, Inc.:**

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Date

J BILLY PIRKLE  
\_\_\_\_\_  
Name

SR. DIRECTION EHS  
\_\_\_\_\_  
Title

**FINAL ORDER**

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), 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

\_\_\_\_\_

**CERTIFICATE OF SERVICE**

I certify that on the date below I hand delivered the original and one true copy of this Complaint and Consent Agreement/Final Order to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. I further certify that on the date below I sent a true and correct copy of the original Complaint and Consent Agreement/Final Order by certified mail, return receipt requested, to:

Sherri Kuhlmann  
Chief Counsel, Agrium Retail  
Crop Production Services/Loveland Products  
3005 Rocky Mountain Avenue  
Loveland, CO 80538

and by first class mail to:

Steven M. Goans, P.E.  
Environmental Engineer Section Supervisor  
Wastewater Section / Water Management Division  
Nebraska Department of Environmental Quality  
PO Box 98922  
Lincoln, NE 68509-8922

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

**APPENDIX A  
PENALTY PAYMENT INFORMATION**

**CHECK PAYMENTS:**

US Environmental Protection Agency  
Fines and Penalties - CFC  
PO Box 979077  
St. Louis, MO 63197-9000

**WIRE TRANSFERS:**

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

**OVERNIGHT MAIL:**

U.S. Bank

1005 Convention Plaza

Mail Station SL-MO-C2GL

ATTN Box 979077

St. Louis, MO 63101

Contact: Natalie Pearson 314-418-4087

**ACH (also known as REX or remittance express):**

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank

808 17<sup>th</sup> Street, NW

Washington, DC 20074

Contact: Jesse White 301-887-6548

ABA = 051036706

Transaction Code 22 - checking

Environmental Protection Agency

Account 310006

CTX Format

**ONLINE PAYMENT:**

There is now an On Line Payment Option, available through the Dept. of Treasury.

This payment option can be accessed from the information below:

WWW.PAY.GOV

Enter "SFO 1.1" in the search field

Open form and complete required fields.