

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

IN THE MATTER OF

**PENNY NEWMAN GRAIN COMPANY**

1805 Harbor Road  
Stockton, California

Respondent.

**CWA SECTION 311  
CLASS II ADMINISTRATIVE  
PENALTY**

**CONSENT AGREEMENT AND  
FINAL ORDER PURSUANT TO  
40 C.F.R. §§ 22.13(b) and 22.18**

Docket No. OPA-09-2023-0009

**CONSENT AGREEMENT**

**A. PRELIMINARY STATEMENT**

1. This Consent Agreement and Final Order (“CA/FO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Sections 311(b)(6)(A) and (b)(6)(B)(ii) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1321(b)(6)(A) and (b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and under the authority provided by Section 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. § 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA Region 9, pursuant to Delegation 2-52A 1200 TN 350 (January 18, 2017), who has in turn delegated them to the EPA Region 9 Director of the Enforcement and Compliance Assurance Division (“Complainant”), pursuant to Delegation R9-2-52A (March 8, 2017).
2. Complainant initiates this proceeding against Penny Newman Grain Company (“PNG,” or “Respondent”) for the alleged violations of Section 311(j) of the Act, 33 U.S.C. § 1321(j), and

its implementing regulations at 40 C.F.R. Part 112, at Respondent's facility located at 1805 Harbor Road, Stockton, California 95203 ("Facility"). Complainant and Respondent are hereinafter collectively referred to as the "Parties."

3. This CA/FO simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. § 22.13(b).

4. The Parties agree that settlement of this matter is consistent with the Act's objectives, in the public interest, and the most appropriate means of resolving this matter.

## **B. STATUTORY AND REGULATORY FRAMEWORK**

5. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits "[t]he discharge of oil or hazardous substances into or upon the navigable waters of the United States [and] adjoining shorelines . . . in such quantities as may be harmful . . ."

6. "Discharge" is defined in Section 311(a)(2) of the Act, 33 U.S.C. § 1321(a)(2), to include, in pertinent part, "any spilling, leaking, pumping, pouring, emitting, emptying, or dumping . . ."

6. Sections 311(j)(1)(C) and 311(j)(5) of the Act, 33 U.S.C. §§ 1321(j)(1)(C) and (j)(5), provide 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 . . ."

7. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA the authorities under Sections 311(j)(1)(C) and (j)(5) of the Act, 33 U.S.C. §§ 1321(j)(1)(C) and (j)(5), to issue regulations.

*In the matter of Penny Newman Grain Company  
Stockton, California*

8. EPA subsequently promulgated regulations, codified at 40 C.F.R. Part 112 (the “Oil Pollution Prevention Regulations”), pursuant to these delegated statutory authorities and pursuant to its authorities under the Act, 33 U.S.C. § 1251 *et seq.*
9. The Oil Pollution Prevention Regulations establish certain procedures, methods, and requirements, which except as provided in 40 C.F.R. § 112.1(b), apply to an owner or operator of a non-transportation-related onshore facility, which, due to its location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in 40 C.F.R. Part 110, into or upon the navigable waters of the United States or adjoining shorelines. *See* 40 C.F.R. § 112.1(b).
10. “Oil” is defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), to include, in pertinent part, “oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge . . . .” Under the Act’s implementing regulations, at 40 C.F.R. § 112.2, oil is defined to include “oil of any kind or in any form, including, but not limited to: fats, oils, or greases of animal, fish, or marine mammal origin; vegetable oils, including oils from seeds, nuts, fruits, or kernels; and, other oils and greases, including petroleum, fuel oil, sludge . . . .”
11. “Onshore facility” is defined in Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), as “any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land,” as well as in the implementing regulations, 40 C.F.R. § 112.2.
12. “Owner or operator” is defined in Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), as “in the case of an onshore facility, . . . any person owning or operating such onshore facility,” as well as in the implementing regulations, 40 C.F.R. § 112.2.

*In the matter of Penny Newman Grain Company  
Stockton, California*

13. “Person” is defined in Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7), as “an individual, firm, corporation, association, and a partnership,” as well as in the implementing regulations, 40 C.F.R. § 112.2.

14. 40 C.F.R. § 112.2 provides that “non-transportation-related” is defined in the “Memorandum of Understanding between the Secretary of Transportation and the Administrator of the Environmental Protection Agency, dated November 24, 1971.”

15. “Navigable waters” are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 112.2.

16. 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 an oil discharge is of harmful quality if it either “(a) Violate[s] applicable water quality standards; or (b) Cause[s] a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause[s] a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.”

17. 40 C.F.R. § 112.3 requires an owner or operator or an onshore or offshore facility subject to the Oil Pollution Prevention Regulations to prepare in writing and implement a Spill Prevention Control and Countermeasure (“SPCC”) Plan , in accordance with 40 C.F.R. § 112.7 and any other applicable section of 40 C.F.R. part 112.

18. A facility that could, because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or on navigable waters or adjoining shorelines must also prepare a Facility Response Plan (“FRP”) in accordance with 40 C.F.R. § 112.20. EPA has determined that a facility with total oil storage capacity greater than or equal to one million gallons, and which is located at a distance (as calculated using the appropriate formula provided in Appendix C to 40 C.F.R. Part 112 or a comparable formula) such that a discharge from the

facility could cause injury to fish and wildlife and sensitive environments, can reasonably be expected to cause substantial harm to the environment in the event of a spill. 40 C.F.R.

§ 112.20(f)(1)(ii)(B).

### **C. EPA's GENERAL ALLEGATIONS**

EPA alleges as follows:

19. PNG is a corporation organized under the laws of California. PNG 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.

20. PNG is the “owner or operator”, of a bulk cargo terminal facility for grain and agriculture byproduct storage and transloading located at 1805 Harbor Road, Stockton, California (“Facility”), within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.

21. A portion of the Facility is “non-transportation-related” within the meaning of 40 C.F.R. § 112.2.

22. The 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.

23. The Facility stores palm oil, which is “oil” within the meaning of Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2.

24. The Facility has several above-ground oil storage tanks with an aggregate maximum above-ground oil storage capacity of approximately 1,470,000 gallons.

25. Primary containment for the oil stored at the Facility is provided by two bulk aboveground storage tanks, with maximum volumes of 921,000 and 548,000 gallons, respectively.

26. The Facility is located less than 500 feet from the Stockton Deep Water Channel of the San Joaquin River. The Stockton Deep Water Channel of the San Joaquin River connects directly into the Sacramento River, then to Suisun Bay, San Pablo Bay, San Francisco Bay and the Pacific Ocean. The Stockton Deep Water Channel of the San Joaquin River is a “navigable water” of the United States as defined in Section 502(7) of the Act, U.S.C. § 1362(7), and 40 C.F.R. § 112.2.

27. The Facility is a non-transportation-related facility that, due to its location, could reasonably be expected, at the time of inspection on April 10, 2019, to discharge oil from an aboveground container to a navigable water of the United States or its adjoining shorelines in a harmful quantity (an “SPCC-regulated facility”).

28. Pursuant to the Act, Executive Order 12777, and 40 C.F.R. § 112.1, Respondent, as the owner or operator of an SPCC-regulated facility, is subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112.

29. Because the Facility could cause “substantial harm” within the meaning of 40 C.F.R. § 112.20(f)(ii), the Facility is additionally subject to the specific regulations for a FRP set forth at 40 C.F.R. § 112.20.

30. On April 10, 2019, EPA Region 9 inspected the Facility to evaluate compliance with the requirements of Section 311 of the Act, 33 U.S.C. § 1321, and with the SPCC and FRP requirements of the Oil Pollution Prevention Regulations, codified at 40 C.F.R. Part 112.

#### **D. ALLEGED VIOLATIONS**

##### **COUNT I**

(Failure to develop an adequate SPCC Plan)

*In the matter of Penny Newman Grain Company  
Stockton, California*

31. Paragraphs 1 through 30, above, are incorporated herein by this reference as if they were set forth here in their entirety.

32. Respondent failed to comply with SPCC Plan requirements of the Oil Pollution Prevention Regulations, specifically by failing to develop an adequate SPCC Plan, as required by 40 C.F.R. § 112.3.

**COUNT II**

**(Failure to develop an adequate FRP)**

33. Paragraphs 1 through 30, above, are incorporated herein by this reference as if they were set forth here in their entirety.

34. At the time of EPA's inspection, Respondent failed to develop an adequate FRP as required by 40 C.F.R. § 112.20, specifically by failing to prepare or submit to the Regional Administrator an FRP based on the criteria in 40 C.F.R. § 112.20(f)(1), along with a completed version of the response plan cover sheet contained in Appendix F, as required by 40 C.F.R. § 112.20(f)(1).

**COUNT III**

**(Discharge of Oil)**

35. Paragraphs 1 through 30, above, are incorporated herein by this reference as if they were set forth here in their entirety.

36. On February 27, 2019, approximately thirteen gallons of palm oil discharged from the Facility into the Stockton Deep Water Channel.

37. EPA alleges that Respondent discharged oil in such quantities as "may be harmful," as defined in 40 C.F.R. § 110.3(b), into or upon the navigable waters of the United States and adjoining shorelines in violation of Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

**E. CIVIL PENALTY**

38. Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), authorizes the administrative assessment of civil penalties in an amount not to exceed \$10,000 per violation per day for each day which the violation continues, up to a maximum of \$125,000. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, Adjustment of Civil Monetary Penalties for Inflation, the administrative assessment of civil penalties may not exceed \$20,719 per day for each day during which the violation continues, up to a maximum Class II civil penalty of \$258,978. *See also* Civil Monetary Penalty Inflation Adjustment, 87 Fed. Reg. 1676 (Jan. 12, 2022).

39. Respondent consents to the assessment of, and agrees to pay, a civil penalty of ONE HUNDRED TWELVE THOUSAND EIGHT HUNDRED SIXTY-SIX DOLLARS (\$112,866) as the civil penalty for the violations alleged herein. The penalty was calculated based on the nature, circumstances, extent, and gravity of the violations, Respondent's ability to pay, its prior history of violations, its degree of culpability, and any economic benefit or savings accruing to Respondent as a result of the violations.

**F. PARTIES BOUND**

40. This CA/FO shall apply to and be binding upon Respondent, its successors, and assigns, until such time as the civil penalty required under Section E above has resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.

41. No change in ownership or legal status relating to the Facility in any way shall alter Respondent's obligations and responsibilities under this CA/FO.



*In the matter of Penny Newman Grain Company  
Stockton, California*

42. Until termination of this CA/FO, Respondent shall give notice of this CA/FO to any successor-in-interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into and execute this CA/FO, and to legally bind Respondent to it.

43. Respondent certifies by signing this CA/FO that, to the best of its knowledge, as of the Effective Date of this CA/FO, it is in compliance with the requirements of Section 311(j) of the Act, 33 U.S.C. § 1321(j), at the Facility.

**F. PAYMENT OF CIVIL PENALTIES**

44. Respondent shall submit payment of the ONE HUNDRED TWELVE THOUSAND EIGHT HUNDRED SIXTY-SIX DOLLARS (\$112,866) within thirty (30) days of the Effective Date as specified in Paragraphs 44 and 45 this CA/FO.

45. All payments shall indicate the name of the Facility, Respondent's name and address and the EPA docket number of this action. Payment shall be made by corporate, certified or cashier's check payable to "Treasurer of the United States" and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency  
PO Box 979077  
St. Louis, MO 63197-9000

Overnight Mail (signed receipt confirmation):

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

Alternatively, payment may be made by electronic transfer as provided below:

*In the matter of Penny Newman Grain Company  
Stockton, California*

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York, NY 10045

Beneficiary: US Environmental Protection Agency

\*Note: Foreign banks must use a United States Bank to send a wire transfer to the US EPA.

ACH (also known as REX or remittance express):

ACH payments to EPA can be made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver

ABA: 051036706

Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking Physical location of US Treasury Facility:

Physical Location of US Treasury Facility:

5700 Rivertech Court

Riverdale, MD 20737

Remittance Express (REX): 1-866-234-5681

Online Payment:

This payment option can be accessed from the information below:

[www.pay.gov](http://www.pay.gov)

Enter “sfo1.1” in the search box on the top left side of the screen.

Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact Craig Steffen at 513-487-2091 or [steffen.craig@epa.gov](mailto:steffen.craig@epa.gov) (primary contact), or Molly Williams at 513-487-2076 or [williams.molly@epa.gov](mailto:williams.molly@epa.gov) (secondary contact).

46. **Notification.** Within thirty (30) days after the due date of the payment, a copy of each check, or notification that the payment has been made by one of the other methods listed above,

*In the matter of Penny Newman Grain Company  
Stockton, California*

including proof of the date payment was made, shall be sent via electronic mail with a transmittal letter, indicating Respondent's name and the docket number for this CA/FO to each of the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency Region 9  
R9HearingClerk@epa.gov

And to:

Janice Witul  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency Region 9  
witul.janice@epa.gov

47. If payment is not received within thirty (30) days of the Effective Date, interest on any overdue amount will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 C.F.R. § 13.11. In addition, a six percent (6%) per annum penalty will be applied on any principal amount not paid within ninety (90) days of the due date. Payment of any interest shall be made in accordance with Paragraphs 44 and 45 above.

48. Respondent's failure to make the payment in full within the time provided in Paragraph 44 may subject Respondent to a civil action to collect the assessed penalties, plus interest, attorneys' fees, costs, and additional quarterly nonpayment penalties pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount, and appropriateness of the penalty and of this CA/FO shall not be subject to review.

49. The civil penalty and any interest, late handling fees, or late penalty payments provided for in the CA/FO shall not be deducted from Respondent's or any other person or entity's federal, state, or local taxes.

**G. ADMISSIONS AND WAIVERS OF RIGHTS**

50. EPA has jurisdiction over the subject matter of this action. The Consent Agreement contains the elements of a complaint required by 40 C.F.R. § 22.14(a)(1)-(3) and (8).

51. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent: (i) admits the jurisdictional allegations of the complaint; (ii) neither admits or denies the specific factual allegations contained in the CA/FO; (iii) consents to the assessment of the civil administrative penalty under Section E of this CA/FO; (iv) waives, for purposes of this proceeding, any right to contest the allegations contained in Sections C and D of the CA/FO; and (v) waives the right to appeal the proposed final order contained in this CA/FO.

#### **H. RESERVATION OF RIGHTS**

52. Except as addressed in this CA/FO, EPA expressly reserves all rights and defenses that it may have.

53. Except as addressed in this CA/FO, EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, including any right EPA may have to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including, without limitation, the assessment of penalties under Section 311(b) of the CWA, 33 U.S.C. § 1321(b).

54. This CA/FO shall not be construed as a covenant not to sue, a release, waiver, or limitation of any rights, remedies, powers, or authorities, civil or criminal, which EPA has under the Act, or any other statutory, regulatory, or common law enforcement authority of the United States, except as otherwise set forth herein.

55. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with any applicable local, state, or federal laws and regulations.

56. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking, nor limit or otherwise preclude Respondent from asserting rights and defenses, in additional enforcement actions should EPA determine that such actions are warranted except as they relate to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Sections C and D of this CA/FO. Respondent's full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties alleged in this CA/FO.

57. Except in an action to enforce this CA/FO, Respondent expressly reserves all rights to assert that neither this CA/FO nor anything in this CA/FO shall be admissible in any proceeding as evidence of an admission by, or to prove the liability of Respondent for the allegations stated herein.

#### **I. MISCELLANEOUS**

58. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

59. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

60. This CA/FO may be executed and transmitted by facsimile, email, or other electronic means, and in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument. If any portion of this Consent Agreement is determined to be unenforceable by any competent court or tribunal, it is the Parties' intent that the remaining portions shall remain in full force and effect.

61. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

62. EPA and Respondent consent to entry of this CA/FO without further notice.

63. By signing this CAFO, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.

**J. EFFECTIVE AND TERMINATION DATES**

64. Pursuant to 40 C.F.R. § 22.45(b), this CA/FO shall be issued only after a 30-day public notice and comment period is concluded. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.13(b), this CA/FO shall take effect on the date the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk ("Effective Date"). This CA/FO shall terminate when Respondent has fully complied with its terms.

**K. PUBLIC NOTICE**

65. Pursuant to Section 311(b)(6)(C)(i) of the Act, 33 U.S.C. § 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order.

66. The petition and consent-withdrawal provisions of 40 C.F.R. § 22.45(c)(4) shall apply.

**IT IS SO AGREED.**

*In the matter of Penny Newman Grain Company  
Stockton, California*

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

/s/

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Amy C. Miller-Bowen, Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 9

March 20, 2023  
Date: \_\_\_\_\_

*In the matter of Penny Newman Grain Company  
Stockton, California*

FOR RESPONDENT PENNY NEWMAN GRAIN COMPANY:

/s/

January 27, 2023

Date: \_\_\_\_\_

\_\_\_\_\_  
Name:

Title:

Address:



*In the matter of Penny Newman Grain Company  
Stockton, California*

**FINAL ORDER**

It is Hereby Ordered that this Consent Agreement and Final Order (EPA Docket No. CWA-09-2023-0009) be entered and that Respondent shall pay a civil penalty in the amount of ONE HUNDRED TWELVE THOUSAND EIGHT HUNDRED SIXTY-SIX DOLLARS (\$112,866) in accordance with the terms of this Consent Agreement and Final Order.

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Steven L. Jawgiel  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 9