

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA**

UNITED STATES OF AMERICA,	)	
	)	
	)	
Plaintiff,	)	Civil Action No.
	)	
v.	)	
	)	
AG PROCESSING INC,	)	
	)	
	)	
Defendant.	)	

**COMPLAINT**

Plaintiff, the United States of America, by the authority of the Attorney General, through its undersigned attorneys, and at the request of the Administrator of the United States Environmental Protection Agency (EPA), hereby files this Complaint and alleges the following:

**I. PRELIMINARY STATEMENT**

1. This is a civil action brought pursuant to Section 311(b)(7)(C) and (e)(2) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(7)(C), (e)(2), against Ag Processing Inc, a Cooperative (Defendant or AGP) with respect to certain vegetable oil and biodiesel production, processing, refining and storage facilities that it owns and operates in the states of Iowa, Minnesota, Missouri, and Nebraska.

**II. JURISDICTION, VENUE AND AUTHORITY**

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 311(b)(7)(E), (e)(2), and (n) of the CWA, 33 U.S.C. § 1321(b)(7)(E), (e)(2), and (n); and 28 U.S.C. §§ 1331, 1345 and 1355. The Court has personal jurisdiction over the Parties.

3. Venue is proper in this judicial district pursuant to Section 311(b)(7)(E) of the CWA, 33 U.S.C. § 1321(b)(7)(E) because six of the eight Facilities that are the subject of this Complaint are located within this district, and most violations alleged occurred within this district.

4. Authority to bring this action is vested in the United States Department of Justice pursuant to Section 506 of the CWA, 33 U.S.C. § 1366.

### **III. PARTIES**

5. Plaintiff is the United States of America, acting at the request of the United States Environmental Protection Agency, an agency of the United States.

6. Defendant is a corporation organized under the laws of the State of Iowa, headquartered in Omaha, Nebraska, and operating various business locations in this judicial district.

7. Defendant is a “person” as defined by Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).

### **IV. STATUTORY AND REGULATORY FRAMEWORK**

#### **A. The Clean Water Act**

8. The Clean Water Act is designed to restore and maintain the chemical, physical, and biological integrity of the nation’s waters. 33 U.S.C. § 1251(a).

9. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), authorizes EPA to promulgate regulations establishing methods, procedures, and equipment to prevent discharges of oil from onshore facilities and contain such discharges when they do occur.

10. Section 311(a) of the CWA, 33 U.S.C. § 1321(a), and 40 C.F.R. § 112.2 define “oil” to mean “oil of any kind or in any form,” which includes vegetable oils.

11. Section 311(a) of the CWA, 33 U.S.C. § 1321(a), and 40 C.F.R. § 112.2 define “onshore facility” to mean any facility “of any kind located in, on, or under, any land within the United States, other than submerged land.”

12. EPA has promulgated regulations pursuant to Section 311(j) of the CWA, which are codified at 40 C.F.R. § 112.1-20.

**B. SPCC Regulations**

13. One category of regulations promulgated by EPA pursuant to Section 311(j) of the CWA are known as Spill Prevention, Control, and Countermeasure Regulations (SPCC Regulations). The SPCC Regulations are codified at 40 C.F.R. § 112.1-12.

14. The SPCC Regulations apply to owners and operators of onshore facilities engaged in storing or distributing oil or oil products with an above ground storage capacity greater than 1,320 gallons which 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(b).

15. The SPCC Regulations require that owners and operators of facilities to which the regulations apply prepare and implement a Spill Prevention, Control and Countermeasure Plan (SPCC Plan) that adheres to certain requirements detailed in the regulations. 40 C.F.R. § 112.7; 40 C.F.R. 112.12(a) (requiring vegetable oil storage facilities to meet requirements of 40 C.F.R. § 112.7). Relevant to this Complaint, the SPCC Regulations require:

- a. Certification of the SPCC Plan by a Professional Engineer (40 C.F.R. § 112.3(d));
- b. Periodic review and amendment of the SPCC Plan (40 C.F.R. § 112.5);

c. The SPCC Plan to describe its conformance with all SPCC requirements including requirements for secondary containment, integrity testing, training, security, and inspections (40 C.F.R. § 112.7(a)(1));

d. Where there is no secondary containment for oil filled and operational equipment, the SPCC Plan must:

(i) establish and document the facility procedures for inspections or a monitoring program to detect equipment failure and/or a discharge; and

(ii) provide an oil spill contingency plan and written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful (40 C.F.R. § 112.7(k));

e. Description in the SPCC Plan of the oil filled and operational equipment at the facility including the type of oil and capacity in each container; discharge prevention measures; discharge controls; countermeasures for discovery, response, and cleanup (40 C.F.R. §§ 112.7(a)(3) and 112.7(a)(3)(i-iv)); and

f. Inclusion of a contact list and phone numbers for the facility response coordinator, National Response Center, cleanup contractors, and all appropriate Federal, State, and local agencies who must be contacted in case of a discharge (40 C.F.R. § 112.7(a)(3)(vi)).

16. SPCC Regulations also require owners and operators of facilities to take certain measures designed to prevent and contain spills including drills and construction of secondary containment. *See* 40 C.F.R. §§ 112.7(e) & (h), 112.8, & 112(c). Section 112.12(a) requires vegetable oil storage facilities to meet requirements of 40 C.F.R. § 112.7. The required measures relevant to this Complaint include:

- a. Construction of adequate secondary containment for the largest single container (40 C.F.R. § 112.12(c)(2));
- b. Construction of adequate secondary containment for drums and portable containers (40 C.F.R. § 112.12(c)(11));
- c. Construction of adequate secondary containment at loading/unloading areas (40 C.F.R. § 112.7(h)); and
- d. Periodic integrity testing of bulk storage containers and retention of documentation related thereto (40 C.F.R. § 112.7(e) and 112.12(c)(6)).

**C. FRP Regulations**

17. Another set of regulations promulgated by EPA pursuant to Section 311(j) of the CWA are known as Facility Response Plan Regulations (FRP Regulations) and are codified at 40 C.F.R. §§ 112.1 and 112.20-21.

18. The FRP Regulations apply to owners and operators of onshore facilities engaged in storing or distributing oil or oil products with an above ground storage capacity greater than 1,320 gallons, which 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 and that, because of their location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines. 40 C.F.R. §§ 112.1(b) & 112.20(a).

19. The FRP Regulations require that owners and operators of facilities to which the regulations apply prepare and implement a Facility Response Plan (FRP) for responding to a worst case discharge and to a substantial threat of such a discharge, of oil or hazardous substances. 40 C.F.R. §§ 112.20(a)(2)(ii).

20. In addition to requiring a Facility Response Plan, the FRP Regulations also require that owners and operators of subject facilities conduct response training, drills, and exercises that comply with requirements set forth in 40 C.F.R. § 112.21.

**D. Enforcement Authority**

21. Pursuant to Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), any person who fails to comply with any regulation issued under Section 311(j) of the CWA shall be subject to a civil penalty in an amount up to \$25,000 per day of violation. This civil penalty level has been adjusted upward over time at 40 C.F.R. § 19.4. Accordingly, the Defendant is subject to civil penalties in an amount up to \$37,500 per day of violation that occurred after January 12, 2009, through November 2, 2015, and \$45,268 per day for each violation occurring thereafter.

22. Pursuant to Section 311(e)(2) of the CWA, District Courts may grant “any relief [under Section 311] that the public interest and equities of the case may require.” 33 U.S.C. § 1321(e)(2).

**V. FACTUAL ALLEGATIONS**

23. At times relevant to this action, Defendant has been and continues to be the “owner and operator” of the facilities listed in Paragraphs 24 - 31 below (collectively, AGP Facilities) which are the subject of this action within the meanings of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6).

24. Sheldon Facility.

a. The Sheldon Facility is located at 804 Second Avenue, Sheldon, Iowa 51201.

b. The Sheldon Facility engages in, *inter alia*, the extraction and processing of soy bean oil, which is stored at the Sheldon Facility in above ground storage tanks. The total

above ground storage capacity for the oil is approximately 2,930,000 gallons and the capacity of the largest tank at this Facility is approximately 950,000 gallons.

c. A drainage ditch connects the Sheldon Facility to the Floyd River, which is a perennial river with bed and banks and an ordinary high water mark, located .57 miles away. The Floyd River flows into the Missouri River.

d. The Floyd River and the Missouri River are “navigable waters” within the meaning of Sections 311(b)(3) and 502(7) of the CWA, 33 U.S.C. §§ 1321(b)(3) and 1362(7), and 40 C.F.R. §§ 110 and 122.2.

25. Manning Facility.

a. The Manning Facility is located at 1000 300<sup>th</sup> St., Manning, IA 51455.

b. The Manning Facility engages in, *inter alia*, the extraction and processing of soy bean oil, which is stored at the facility in above ground tanks. The total above ground storage capacity for regulated oils is approximately 1,947,713 gallons. The capacity of the largest tank at this facility is 550,000 gallons.

c. A drainage ditch connects the Manning Facility to the West Nishnabotna River, a perennial river with bed and banks and an ordinary high water mark located .5 miles from the Manning Facility. The West Nishnabotna River flows into the Nishnabotna River, a perennial river with bed and banks and an ordinary high water mark, which flows into the Missouri River.

d. The West Nishnabotna River, the Nishnabotna River, and the Missouri River are “navigable waters” within the meaning of Sections 311(b)(3) and 502(7) of the CWA, 33 U.S.C. §§ 1321(b)(3) and 1362(7), and 40 C.F.R. §§ 110 and 122.2.

26. Algona MEP Facility.

a. The Algona MEP Facility is located at 2108 140<sup>th</sup> Avenue, Algona, IA 50511.

b. The Algona MEP Facility receives vegetable oil and processes it on site into methyl ester. The methyl ester is stored until loaded onto trucks and rail cars for shipment. The total above ground storage capacity for regulated oils at the Algona MEP Facility is approximately 5,791,000 gallons. The capacity of the largest tank at this facility is 1,000,000 gallons.

c. The Algona MEP Facility is located within a half mile of the East Fork of the Des Moines River, a perennial river with bed and banks and an ordinary high water mark, which flows into the Des Moines River, a perennial river with bed and banks and an ordinary high water mark, which flows into the Mississippi River.

d. The Des Moines River and the Mississippi River are “navigable waters” within the meaning of Sections 311(b)(3) and 502(7) of the CWA, 33 U.S.C. §§ 1321(b)(3) and 1362(7), and 40 C.F.R. §§ 110 and 122.2.

27. Algona Soybean Oil Facility.

a. The Algona Soybean Oil Facility is located at 1108 240<sup>th</sup> Street, Algona, IA 50511.

b. The Algona Soybean Oil Facility is a soy bean oil terminal, which stores soy bean oil in above ground storage tanks. The total above ground storage capacity for regulated oils is approximately 21 million gallons. The capacity of the largest tank at this facility is 10,536,000 gallons.

c. The Algona Soybean Oil Facility is located within a half mile of the East Fork of the Des Moines River, a perennial river with bed and banks and an ordinary high water



mark, which flows into the Des Moines River, a perennial river with bed and banks and an ordinary high water mark, which flows into the Mississippi River.

d. The Des Moines River and the Mississippi River are “navigable waters” within the meaning of Sections 311(b)(3) and 502(7) of the CWA, 33 U.S.C. §§ 1321(b)(3) and 1362(7), and 40 C.F.R. §§ 110 and 122.2.

28. Everly Facility.

a. The Everly Facility is located at 1755 340<sup>th</sup> Street, Everly, IA 51388.

b. The Everly Facility is soybean oil storage facility that has one 10,500,000 gallon above ground storage tank that stores soybean oil.

c. The Everly Facility is located less than a half mile from Stoney Creek, a perennial stream with bed and banks and an ordinary high water mark, which flows into the Ocheyedan River, a perennial river with bed and banks and an ordinary high water mark, waterway, which flows into the Little Sioux River, a perennial river with bed and banks and an ordinary high water mark, which flows into the Missouri River.

d. Stoney Creek, the Ocheyedan River, the Little Sioux River, and the Missouri River are “navigable waters” within the meaning of Sections 311(b)(3) and 502(7) of the CWA, 33 U.S.C. §§ 1321(b)(3) and 1362(7), and 40 C.F.R. §§ 110 and 122.2.

29. Eagle Grove Facility.

a. The Eagle Grove Facility is located at 500 N Commercial Ave, Eagle Grove, IA 50533.

b. The Eagle Grove Facility is a soybean processing facility that has a 5,000,000 gallon storage capacity in its largest tank.

c. The Eagle Grove Facility is located adjacent to local storm drains, which drain to County Ditch #94, a perennial river with bed and banks and an ordinary high water mark, which flows into the Boone River, a perennial river with bed and banks and an ordinary high water mark.

d. County Ditch #94 and the Boone River are “navigable waters” within the meaning of Sections 311(b)(3) and 502(7) of the CWA, 33 U.S.C. §§ 1321(b)(3) and 1362(7), and 40 C.F.R. §§ 110 and 122.2.

30. Hastings Facility.

a. The Hastings Facility is located at 2801 E 7th St, Hastings, NE 68901.

b. The Hastings Facility is a soybean processing facility and a soybean oil refinery that has a 5,000,000 gallon storage capacity in its largest tank.

c. The Hastings Facility is located approximately 1100 feet from the West Fork of the Big Blue River.

d. The Big Blue River is a “navigable water” within the meaning of Sections 311(b)(3) and 502(7) of the CWA, 33 U.S.C. §§ 1321(b)(3) and 1362(7), and 40 C.F.R. §§ 110 and 122.2.

31. Dawson Facility.

a. The Dawson Facility is located at 800 Diagonal St, Dawson, MN 56232.

b. The Dawson Facility is a soybean processing and oil storage facility that has one 2,990,199 million gallon storage tank.

c. The Dawson Facility is located next to a drainage ditch that flows half a mile to the West Branch of the Lacqui Parle River, which flows into the Lacqui Parle River, a perennial river with bed and banks and an ordinary high water mark, which flows to the

Minnesota River, a perennial river with bed and banks and an ordinary high water mark, which flows into the Mississippi River.

d. The Lacqui Parle River, the Minnesota River, and the Mississippi River are “navigable waters” within the meaning of Sections 311(b)(3) and 502(7) of the CWA, 33 U.S.C. §§ 1321(b)(3) and 1362(7), and 40 C.F.R. §§ 110 and 122.2.

32. EPA has conducted inspections of Defendant’s facilities in conformance with applicable SPCC Regulations and FRP Regulations at Manning, Sheldon, Everly, Algona Soybean Oil, Algona MEP, and Dawson Facilities.

33. Defendant has provided EPA with copies of the SPCC, and other information relevant to each of its Facilities’ compliance with SPCC requirements.

34. Defendant has provided EPA with copies of the Facility Response Plans and other information relevant to each of its Facilities’ compliance with FRP requirements

### **FIRST CLAIM FOR RELIEF**

#### **Failure to Comply with SPCC Regulations at Certain AGP Facilities**

35. Paragraphs 1 through 34 are incorporated herein by reference.

36. Each of the AGP Facilities described in Paragraphs 24 through 27, and Paragraph 31 is a “non-transportation related” “onshore facility” that came into operation before August 16, 2002, that is engaged in storing and distributing “oil” or oil products, and has an above-ground storage capacity greater than 1,320 gallons. *See* Sections 311(a) of the CWA, 33 U.S.C. § 1321(a); 40 C.F.R. § 112.2 (defining onshore facility” to mean any facility “of any kind located in, on, or under, any land within the United States, other than submerged land” and “oil” to mean “oil of any kind or in any form” which includes vegetable oils).

37. A discharge of oil from each of the AGP Facilities described in Paragraphs 24 through 27, and Paragraph 31 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 within the meaning of 40 C.F.R. § 112.1(b).

38. Defendant is required to create, maintain and implement an SPCC Plan at each of the AGP Facilities and comply with applicable requirements set forth in the SPCC Regulations codified at 40 C.F.R. §§ 112.1(b), 112.3.

39. AGP failed to comply with the requirements of the CWA and the SPCC Regulations promulgated thereunder, by failing to prepare and implement an SPCC Plan in accordance with good engineering practices, and failing to implement certain required spill prevention measures, in violation of 40 C.F.R. §§ 112.3 and 112.7. Specifically, Defendant failed to implement the specific regulations at each of the AGP Facilities described in Paragraphs 24 through 27, and Paragraph 31, as detailed in Table 1 (attached).

40. Pursuant to Section 311(b)(7)(C) of the Clean Water Act, 33 U.S.C. § 1321(b)(7)(c) and 40 C.F.R. Part 19.4, Defendant is liable for penalties at each of the AGP Facilities in an amount up to \$37,500 per day of violation that occurred after January 12, 2009, through November 2, 2015, and \$45,268 per day for each violation occurring thereafter.

## **SECOND CLAIM FOR RELIEF**

### **Failure to Implement FRP Regulations at Certain AGP Facilities**

41. Paragraphs 1 through 34 are incorporated herein by reference.

42. Each of the AGP Facilities described in Paragraphs 24 through 31 is a “non-transportation related” “onshore facility” that came into operation before August 16, 2002, that is engaged in storing and distributing “oil” or oil products, and has an above-ground

storage capacity greater than 1,320 gallons. *See* Sections 311(a) of the CWA, 33 U.S.C. § 1321(a); 40 C.F.R. § 112.2 (defining onshore facility” to mean any facility “of any kind located in, on, or under, any land within the United States, other than submerged land” and “oil” to mean “oil of any kind or in any form” which includes vegetable oils).

43. A discharge from each of the AGP Facilities described in Paragraphs 24 through 31 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 and because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines within the meaning of 40 C.F.R. §§ 112.1(b) and 112.20(a).

44. Pursuant to 40 C.F.R. § 112.20, Defendant was required to prepare and submit to EPA a Facility Response Plan for responding to a worst-case discharge, and to a substantial threat of such a discharge, of oil or hazardous substances that conforms with applicable requirements set forth in the FRP Regulations codified at 40 C.F.R. § 112.20.

45. At the time of each inspection, EPA ascertained that AGP had failed to prepare and implement an adequate FRP, in violation of the FRP Regulations set forth in 40 C.F.R. § 112.20, by the date such plan was required. Specifically, AGP failed to implement an FRP at the Sheldon Facility from at least November 7, 2011, to March 31, 2015; at the Manning Facility from at least November 7, 2011, to May 14, 2015; at the Algona MEP Facility from at least November 7, 2011, to May 4, 2015; at the Algona Oil Facility from at least November 7, 2011, to June 17, 2015; at the Everly Facility from at least November 7, 2011, to January 1, 2016; at the Eagle Grove Facility from at least November 7, 2011 to July 1, 2014; and at the Dawson Facility from at least November 7, 2011 to November 1, 2016.

46. At the time of each inspection, EPA ascertained that AGP had failed to prepare adequate substantial harm determinations, consistent with the FRP Regulations set forth in 40 C.F.R. §§ 112.20(a)(2), 112.20(f), and Part 112 Appendix C, by the date such determination was required. Specifically, AGP failed to prepare an adequate determination at the Sheldon Facility from at least November 7, 2011, to March 31, 2015; at the Manning Facility from at least November 7, 2011, to May 14, 2015; at the Algona MEP Facility from at least November 7, 2011, to May 4, 2015; at the Algona Oil Facility from at least November 7, 2011, to June 17, 2015; at the Everly Facility from at least November 7, 2011, to January 1, 2016; at the Eagle Grove Facility from at least November 7, 2011 to July 1, 2014; and at the Dawson Facility from at least November 7, 2011 to November 1, 2016.

47. Defendant was required to conduct training, drills and exercises at each of the AGP Facilities described in Paragraph 24 through 31, in compliance with the requirements set forth in 40 C.F.R. § 112.21. Upon a reasonable opportunity for further investigation or discovery, Plaintiff alleges Defendant did not comply with one or more of the requirements to conduct training, drills and exercises at each of the AGP Facilities in compliance with the requirements set forth in 40 C.F.R. § 112.21.

48. Defendant was required to maintain records for training, drills and exercises at each of the AGP Facilities described in Paragraph 24 through 31, in compliance with the requirements set forth in 40 C.F.R. §§ 112.20(h)(8)(ii), 112.21, and Part 112 Appendix F. These records include SPCC/FRP Awareness Trainings, Qualified Individual Notification Drills, Table Top Exercises, and Equipment Deployment. Upon a reasonable opportunity for further investigation or discovery, Plaintiff alleges Defendant did not comply with one or more of the requirements to maintain the required records at each of the AGP Facilities in

compliance with the requirements set forth in 40 C.F.R. §§ 112.20(h)(8)(ii), 112.21, and Part 112 Appendix F.

49. Pursuant to Section 311(b)(7)(C) of the Clean Water Act, 33 U.S.C. § 1321(b)(7)(c) and 40 C.F.R. Part 19.4, Defendant is liable for penalties in an amount up to \$37,500 per day of violation that occurred after January 12, 2009, through November 2, 2015, and \$45,268 per day for each violation occurring thereafter.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays that this Court:

- A. Assess against Defendant a civil penalty, and enter judgment against Defendant and in favor of the United States, in an amount up to the applicable amount set forth at 40 C.F.R. § 19.4 per day for each violation;
- B. Order Defendant to take all appropriate action to prevent spills from its facilities into waters of the United States, in compliance with the Clean Water Act, the SPCC Regulations, and the FRP Regulations; and
- C. Grant such other relief as this Court may deem just and proper.

Respectfully submitted,

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**TABLE 1**  
**SPCC Violations by facility**

**Manning**

Failure to provide sized secondary containment for the soybean oil lift tank, in violation of 40 C.F.R. 112.12(c)(2).
No integrity testing documentation available per the schedule described in the Plan, in violation of 40 C.F.R. 112.12(c)(6).
Five-year review not conducted and recertification of change in substantial harm certification by professional engineer not done in violation of 40 C.F.R. Part 112.5(b).
No confirmation in SPCC Plan that five-year review was conducted and whether technical amendments to the Plan were required compliance with 40 C.F.R. Part 112.5(b) in violation of 40 C.F.R. Part 112.7(a)(1)
The professional engineer certification statement and attestations in SPCC Plan were unsigned, in violation of 40 C.F.R. 112.3(d).
Failure to include all oil-filled manufacturing equipment in the SPCC plan; type of oil and capacity in each container; discharge prevention measures; discharge controls; countermeasures for discovery, response, and cleanup (including oil spill removal organization) in violation of 40 C.F.R. 112.7(a)(3) and 112.7(a)(3)(i-iv); 40 C.F.R. 112(a) (requiring facilities that store vegetable oils to comply with 112.7).
Failure to describe in SPCC Plan the secondary containment provided for the loading rack, in violation of 40 C.F.R. 112.7(h); 40 C.F.R. 112(a) (requiring facilities that store vegetable oils to comply with 112.7).

**Sheldon**

Failure to provide sized secondary containment for the largest compartment loaded at the loading rack, in violation of 40 C.F.R. 112.7(h)(1); 40 C.F.R. 112(a) (requiring facilities that store vegetable oils to comply with 112.7)
Failure to provide general secondary containment for the #6 fuel oil unloading area, in violation of 40 C.F.R. 112.7(c)
Failure to provide secondary containment for the drums and portable containers, in violation of 40 C.F.R. 112.8(c)(11); 112.12(c)(11)
No indication in SPCC Plan of whether five-year review was conducted and whether technical amendments to the Plan were required, although the Substantial Harm criteria changed, thus triggering recertification by a professional engineer, in violation of 40 C.F.R. 112.5(b).
Failure to include in the SPCC plan: all of the oil-filled manufacturing equipment; type of oil and capacity in each container; discharge prevention measures; discharge controls; countermeasures for discovery, response, and cleanup (including oil spill removal organization), in violation of 40 C.F.R. 112.7(a)(3) and 112.7(a)(3)(i-iv); 40 C.F.R. 112(a) (requiring facilities that store vegetable oils to comply with 112.7).
Failure to describe within the SPCC Plan the secondary containment provided for the loading rack, transfer areas, oil-filled manufacturing equipment, and portable container areas, in violation 40 C.F.R. 112.7(a)(1) and (c); 40 C.F.R. 112(a) (requiring facilities that store vegetable oils to comply

with 112.7.

#### **Algona MEP**

No integrity testing documentation available per the schedule described in the SPCC Plan, in violation of 40 C.F.R. 112.12(c)(6).

Although the five-year review was conducted, the certifying signature in SPCC Plan did not include a statement whether technical amendments to the Plan were required, in violation of 40 C.F.R. 112.5(b).

The professional engineer certification statement and attestations in SPCC Plan were unsigned, in violation of 40 C.F.R. 112.3(d).

Failure to include in the SPCC Plan: all of the process related tanks and containers (oil-filled manufacturing equipment) ; type of oil and capacity in each container; discharge prevention measures; discharge controls; countermeasures for discovery, response, and cleanup (including oil spill removal organization), in violation of 40 C.F.R. 112.7(a)(3) and 112.7(a)(3)(i-iv); 40 C.F.R. 112(a) (requiring facilities that store vegetable oils to comply with 112.7).

Failure to describe within the SPCC Plan the secondary containment provided for the loading rack, in violation of 40 C.F.R. 112.7(h); 40 C.F.R. 112(a) (requiring facilities that store vegetable oils to comply with 112.7).

#### **Algona Oil**

The 2012 SPCC Plan lacked a signed Substantial Harm Certification, but the Checklist was completed by the owner/operator and concludes the facility is FRP-regulated, in violation of 112.20(e).

The professional engineer certification statement lacked required elements and attestations in the SPCC Plan, in violation of 40 C.F.R. 112.3(d).

The SPCC Plan did not address the sized secondary containment requirements for the loading rack, in violation of 112.7(h)(1).

Monthly facility inspection records going back three years were not available on the date of the inspection, in violation of 40 C.F.R. 112.7(e).

The facility owns/operates a transformer on-site but the SPCC Plan does not address the oil-filled manufacturing equipment and general secondary containment requirements, in violation of 112.7(k).

#### **Dawson**

The five-year review and evaluation of the SPCC Plan was not completed within five years and was not documented. 40 C.F.R. 112.5(b).

The telephone call-down list lists EPA Region 7 telephone numbers for the Federal On Scene Coordinator and the Regional Response Center instead of the correct EPA Region 5 contacts and respective telephone number(s) in violation of 40 C.F.R. 112.7(a)(3)(vi); 40 C.F.R. 112(a) (requiring facilities that store vegetable oils to comply with 112.7).