

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10679 / August 29, 2019

SECURITIES EXCHANGE ACT OF 1934
Release No. 86822 / August 29, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19398

In the Matter of

**OMEGA PROTEIN
CORPORATION,**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933 AND SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Omega Protein Corporation (“Omega” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. Omega, a Houston-based manufacturer and distributor of omega-3 fish oils and fish meal products with facilities in Virginia, Mississippi, and Louisiana, materially misrepresented its compliance with loan covenants in periodic reports filed with the Commission in 2015.

2. Historically, a significant source of Omega's external financing was the federal government, which provided or guaranteed loans to the company as part of a broader program to support the national fishing and aquaculture industry. To obtain these loans, Omega agreed to a number of covenants, including representations of compliance with applicable federal laws and regulations relating to environmental matters.

3. Omega, however, has been a repeat offender of the Clean Water Act ("CWA"). In 2013, Omega pleaded guilty to criminal charges. Pursuant to the plea agreement, a court entered judgment sentencing Omega to a three-year term of probation, a special condition of which was to develop and implement an environmental compliance program at its facilities to detect and prevent violations of the law. In January 2017, Omega again pleaded guilty to criminal charges, acknowledged violating the first plea agreement, and admitted to discharging pollutants at its Louisiana facility on December 8, 2014 and February 1, 2016.

4. In Omega's 2014 annual report and three subsequent quarterly reports in 2015, which were filed after the December 8, 2014 pollution, Omega misrepresented that it was in compliance with all of the covenants related to its loan agreements with the federal government. The company's violation of its loan covenants was a default that required the payment of accelerated interest under its outstanding loan agreements.

5. As a result of this conduct, Omega violated the antifraud provision in Section 17(a)(2) of the Securities Act and violated the reporting provisions of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder.

Respondent

6. **Omega Protein Corporation** ("Omega"), incorporated in Nevada and headquartered in Houston, Texas, manufactured and distributed omega-3 fish oils and fish meal products. In October 2017, a privately-held Canadian company agreed to purchase Omega in an all-cash, going-private transaction that closed on December 19, 2017. Until that time, Omega's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was listed on the New York Stock Exchange. Prior to the closing of the acquisition, Omega filed periodic reports with the Commission pursuant to Section 13(a) of the Exchange Act and related rules thereunder.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Related Entity

7. **Omega Protein, Inc.** (“OPI”), incorporated in Virginia and headquartered in Houston, Texas, was the principal operating subsidiary of Omega Protein Corp. It was predominantly dedicated to the production of animal nutrition products and operated in the menhaden harvesting and processing business through three processing plants in Louisiana, Mississippi, and Virginia.

Background

8. Throughout its history as a public issuer from 1998 to December 2017, Omega financed its operations significantly through programs authorized by Title XI of the Merchant Marine Act of 1936 (“Title XI”), as amended. These programs essentially have promoted the national commercial fishing and aquaculture industries, among others, through discounted loans guaranteed by the federal government and discounted direct loans from the federal government (referred to herein as “Title XI loans”).

9. The Title XI loans are administered by the National Marine Fisheries Service (“NMFS”). NMFS approved financing applications made by Omega’s subsidiary OPI and required that OPI and Omega execute agreements, consent to certain covenants, and provide certifications in order to receive direct loans from the federal government. Omega attached these documents as exhibits to its filings with the Commission and thereafter incorporated them by reference in Omega’s annual reports on Form 10-K.

10. NMFS regularly required that OPI and Omega provide a “Certification and Indemnification Agreement Regarding Environmental Matters,” as a condition to, and in consideration of, the federal government loaning money directly to Omega. In that certification, with respect to its properties in Louisiana, Mississippi, and Virginia, OPI and Omega covenanted the following: (i) that at all times it complied with and was currently in compliance with applicable federal laws and regulations relating to environmental matters; (ii) that it had not received any notices of violation of any federal laws and regulations relating to environmental matters; (iii) that no investigations, lawsuits, orders, or rulings were pending or threatened regarding its properties; and (iv) that it would promptly notify NMFS in writing of any fact or event which would affect, alter or limit the representations and warranties included in the certification. In this certification, OPI and Omega also agreed that its covenants were irrevocable and unconditional, and that it expressly waived any defense based on the government’s failure or delay to assert or exercise any right conferred by any of the loan documents.

11. In the “Title XI Financial Agreement,” OPI and Omega covenanted to provide written notice to the government within ten days, but in no event more than 30 days, of any matter which would diminish “its ability to fully and faithfully perform any covenant with the government,” among other things. This agreement required annual certifications from Omega that no default occurred during the reporting period. Defaults under the Financial Agreement included any failure to comply with and discharge all covenants, conditions, and obligations

imposed on OPI and Omega by any agreement executed in connection with the Title XI loan. Upon occurrence of a default, OPI and Omega agreed to pay the federal government the entire principal and interest due on the outstanding loans, with interest accruing at 18% until the default was remedied.

12. Many of the Title XI loan agreements contained what were essentially cross-default provisions, meaning that a default on any Title XI loan could be construed by NMFS as a default on all of Omega's outstanding Title XI loans.

13. By December 31, 2014, OPI and Omega had approximately \$21.1 million of borrowings outstanding under Title XI, from five different loans with a total original notional amount of \$41.2 million. The borrowings outstanding at the end of 2014 represented over half of the company's total debt at that point in time.

14. In each quarter from at least 2005 through the end of 2015, for financial reporting purposes, Omega finance personnel engaged in a standardized process for testing the company's compliance with its Title XI loan covenants.

15. As part of this process, Omega finance personnel used a two-page template document entitled "Title XI Compliance Check Off List," which contained a number of line entries with an adjacent column of blank spaces under the heading "In Compliance." For example, the first two lines on this document read, "Any failure or occurrence of the following constitutes an event of default: Any failure to pay or make payments on interest, principal, or guarantee fees." For the second sentence of that particular line entry, completed Check Off Lists included the word "Yes" under the column headed "In Compliance." None of the line entries in the Check Off Lists related to environmental issues or regulation, despite the certifications and covenants described above.

16. In addition, as part of the standardized process at the quarterly close for testing the company's compliance with its Title XI loan covenants, Omega distributed a questionnaire to corporate officers and key management personnel designed to identify any material non-compliance with environmental requirements. Omega's Vice President for Operations also completed a quarterly Environmental Certificate regarding the status of compliance with environmental obligations. This information was submitted to Omega's Disclosure Committee for review in advance of quarterly filings. The Disclosure Committee and the finance personnel reviewed all of the referenced documents and spoke to other Omega employees in order to ensure that the company was in compliance with the line entries on the "Check Off Lists."

17. In each quarter from at least 2005 through the end of 2015, Omega finance personnel gathered this compliance and other information related to its Title XI loans for inclusion in Omega's quarterly and annual reports filed with the Commission.

Omega's First Plea to Criminal Violations of the Clean Water Act

18. In June 2013, OPI pleaded guilty in the U.S. District Court for the Eastern District of Virginia to two criminal felony counts of violating the CWA.² A statement of facts in support of the guilty plea described pollution that occurred at OPI's facility in Reedville, Virginia between May 2008 and February 2011. Pursuant to the plea agreement, a court entered judgment sentencing Omega to certain terms of probation, including a requirement that OPI pay a \$5.5 million fine, be placed on a three-year term of probation, and make a \$2 million payment to the National Fish and Wildlife Foundation to fund projects in Virginia related to the protection of the environmental health of the Chesapeake Bay. Most importantly for this matter, the judgment required OPI to develop and implement an environmental compliance program at all of its facilities to detect and prevent violations of the law.

19. Following its June 2013 plea, the Environmental Protection Agency ("EPA") provided a notice to Omega in January 2014 that it was ineligible for receipt of governmental loans or benefits if any part of the work would be performed or if the loan collateral would be located at the facility where the offense occurred, which in this case was Reedville, Virginia.

20. After becoming aware of the EPA's notice to Omega, NMFS determined in September 2014 not to approve additional loans to Omega under existing commitments made prior to the events that gave rise to the 2013 plea.

21. Following the June 2013 guilty plea, Omega funded and implemented the environmental compliance program required by the plea agreement and the conditions of its probation. Omega continued to monitor environmental compliance through the use of quarterly questionnaires, the quarterly Environmental Certificate, and oversight by the Disclosure Committee.

22. Despite the first guilty plea and its associated requirement to implement an environmental compliance program, Omega made no changes to the standardized process at the quarterly close for testing the company's compliance with its Title XI loan covenants – even the "Title XI Compliance Check Off List" remained the same. Furthermore, Omega made no changes to the standardized process as a result of either the EPA's notice or NMFS's decision not to approve additional loans to Omega.

Omega Becomes Aware of Additional Environmental Problems

23. In March 2015, Omega received a report, through its toll-free, 24-hour ethics hotline, of employee theft and illegal dumping at its Abbeville, Louisiana facility. The caller offered to give more information upon a return call. Not receiving one, the caller placed another call to the ethics hotline on the following day, requesting a return call.

² See U.S. v. Omega Protein, Inc., Crim. No. 2:13-cr-00043 (E.D. Va. June 4, 2013).

24. Omega did not return these calls in a timely manner in March 2015 because the hotline system Omega put in place failed to notify the appropriate Omega executives.

25. By April 2015, however, Omega's senior management had become aware of the calls to the internal hotline, but through a source other than the hotline, and as a result became aware of the allegation of illegal dumping potentially in violation of environmental laws. Shortly thereafter, Omega commenced an internal investigation into the allegations made through the hotline.

Omega's Second Plea to Criminal Violations of the Clean Water Act

26. In January 2017, OPI pleaded guilty in the Western District of Louisiana to two criminal felony counts of violating the CWA.³

27. A statement of facts in support of OPI's guilty plea described how OPI discharged pollutants into U.S. waters surrounding its facility in Abbeville, Louisiana, on or about December 8, 2014 and February 1, 2016. Pursuant to the plea agreement, a court entered judgment sentencing Omega to the payment of a \$1 million fine, the payment of \$200,000 as corporate community service, and a three-year term of probation.

Omega Misrepresented Its Compliance with Title XI Covenants in Filings

28. In its 2014 annual report on Form 10-K, filed with the Commission on March 11, 2015, Omega stated that it "was in compliance with all of the covenants contained" in the borrowings outstanding under Title XI. Omega repeated this representation in the three quarterly reports subsequently filed on Form 10-Q with the Commission on May 11, 2015, August 5, 2015, and November 4, 2015.

29. These representations were false. As described herein, OPI admitted in connection with its 2017 guilty plea that it knowingly discharged pollutants into U.S. waters surrounding its Abbeville facility on or about December 8, 2014. Also as already described, following the first guilty plea, Omega made no changes to the "Title XI Compliance Check Off List" and standardized process at the quarterly close for testing the company's compliance with its Title XI loan covenants, despite the first guilty plea and its associated requirement to implement an environmental compliance program. Furthermore, by April 2015, Omega executives were on notice of an accusation that illegal dumping was taking place at the Abbeville plant. Those accusations were later substantiated by a criminal investigation that resulted in the company's second guilty plea to criminal felony violations of the CWA.

30. Between April 2015 – the time Omega learned of the allegations underlying its 2017 guilty plea – and November 2015, Omega retired all balances owed on its Title XI loans using a commercial credit facility without paying accelerated interest which would have been required had a default been declared on its Title XI debt. Under the terms of Omega's

³ See U.S. v. Omega Protein, Inc., Crim. No. 16-CR-00292-01 (W.D. La. Jan. 18, 2017).

commercial credit facility, a default on the Title XI loans was grounds for a cross default on the commercial credit facility. By not disclosing the covenant violation to its lenders, Omega was able to maintain access to the commercial credit facility it used to pay off its Title XI loans and, thereby, avoid any accelerated interest that might have accrued if the lenders had declared a default on its Title XI debt. Because Omega misrepresented its covenant compliance in its annual and quarterly reports, investors were not informed of Omega's exposure to accelerated interest charges.

Violations

31. By engaging in the conduct described above, Omega violated Section 17(a)(2) of the Securities Act which prohibits obtaining money or property in the offer or sale of securities by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. See 15 U.S.C. § 77q(c). Proof of scienter is not required to establish a violation of Section 17(a)(2) of the Securities Act; negligence is sufficient. Aaron v. SEC, 446 U.S. 680, 695-700 (1980).

32. By engaging in the conduct described above, Omega violated Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder which require issuers of securities registered pursuant to Section 12 to file with the Commission accurate annual reports. An issuer violates Section 13(a) and Rules 13a-1 and 13a-13 thereunder if it files a report that contains materially false or misleading information. SEC v. Falstaff Brewing Corp., 629 F.2d 62, 72 (D.C. Cir. 1980). By engaging in the conduct described above, Omega violated Rule 12b-20 of the Exchange Act, which requires that reports contain such further material information necessary to make the required statements made in the reports not misleading.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Omega's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent Omega cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act and Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder.

B. Respondent Omega shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$400,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Omega Protein Corporation as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5720.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary