

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:

)	
Tank Transport, Inc.)	
9202 N. 107 th Street)	AED/MSEB # 6069
Milwaukee, WI)	
)	

NOTICE OF DETERMINATION

Pursuant to the Policy on Incentives for Self-Policing ("Audit Policy"), 65 Fed. Reg. 19,618 (April 11, 2000), the U.S. Environmental Protection Agency ("EPA" or "Agency") hereby issues this Notice of Determination (NOD) regarding violations voluntarily disclosed to EPA by Tank Transport, Inc. ("Tank Transport") for the following facility:

Tank Transport, Inc.
9202 N. 107th Street
Milwaukee, WI 53224

Preliminary Statement

1. As an incentive for regulated entities to conduct independent environmental compliance audits and disclose any violations, EPA may eliminate or substantially reduce the gravity-based component of civil penalties to be assessed for violations which are voluntarily disclosed in compliance with the conditions specified in the Audit Policy. Tank Transport discovered the violations through due diligence and identified the violations promptly to EPA.

Findings of Fact

1. The violations that are the subject of this NOD were voluntarily disclosed by Tank Transport to EPA following the discovery of the violations on September 25, 2001 by Tank Transport's office staff. Tank Transport's President, Dale Boedeker, promptly reported the violations to EPA by telephone, followed up by a written report on November 2, 2001. On December 12, 2001, per EPA request, Tank Transport also submitted an Audit Policy Eligibility Check list.

2. Tank Transport is a carrier within the meaning of 40 C.F.R. § 80.2(t) and as such is subject to the requirements of § 211 of the Clean Air Act (the Act), 42 U.S.C. § 7545, and the regulations promulgated thereunder at 40 C.F.R. Part 80, subpart D.

3. Tank Transport disclosed to EPA violations of the following at its facility located at 9202 N. 107th Street, Milwaukee, Wisconsin:

(a) Misdelivery of 800 gallons of Midgrade (89 octane) conventional gasoline ("CG") on September 22, 2001, to O'Connors retail gasoline facility which is located in an RFG covered area. This constitutes 1 violation of the § 211 of the Clean Air Act (the Act), 42 U.S.C. § 7545, and the regulations promulgated thereunder at 40 C.F.R. Part 80, subpart D.

(b) Misdelivery of 8003 gallons of Regular (87 octane) CG on September 22, 2001, to O'Connors retail gasoline facility which is located in an RFG covered area. This constitutes 1 violation of the § 211 of the Clean Air Act (the Act), 42 U.S.C. § 7545, and the regulations promulgated thereunder at 40 C.F.R. Part 80, subpart D.

4. Based on information provided by Tank Transport for the disclosures identified above, EPA has determined that Tank Transport has met each of the following conditions set forth in the Audit Policy:

(a) Tank Transport has stated that the violations were discovered through due diligence.

(b) Tank Transport has stated that the violations were identified voluntarily, not through a monitoring, sampling or auditing procedure required by statute, regulation, permit, judicial order, administrative order, consent decree or consent agreement.

(c) The violations were promptly disclosed and submitted in writing by Tank Transport.

(d) Tank Transport has stated that the violations were identified and disclosed prior to the commencement of a federal, state, or local agency inspection, investigation, or information request, notice of a citizen suit, legal complaint by a third party, or imminent discovery by a regulatory agency.

(e) Tank Transport has stated the steps the facility has taken to correct the violations, including pumping out, on September 25, the day the misdelsivery was discovered, the remaining CG gasoline and replacing it with RFG.

(f) Where applicable, Tank Transport has stated to EPA what steps it has taken to prevent a recurrence of the violations. Tank Transport is routinely auditing its compliance with applicable environmental laws to ensure the violations will not be repeated, and to prevent future violations.

(g) Tank Transport has stated that the violations at issue or closely related violations have not occurred previously within the past three years at the same facility and are not part of a pattern of violations on the part of Tank Transport's organization within the past five years.

(h) Tank Transport has stated that the violations at issue have not resulted in serious actual harm to human health or the environment, and that the violations have not presented an imminent and substantial endangerment to public health or the environment. Furthermore, Tank Transport has stated that the violations at issue do not violate the specific terms of any judicial order, administrative order, consent decree or consent agreement.

(i) Tank Transport has cooperated with EPA and provided the information necessary for the Agency to determine the applicability of the Audit Policy to its disclosure.

Determination

Based on EPA's review of information and documentation received from Tank Transport, and in reliance on Tank Transport's certifications, EPA has determined that:

1. Tank Transport has met all of the conditions of the Audit Policy and thus, is eligible for a waiver of the total gravity-based civil penalty for the disclosed violations;
2. No significant economic benefit of noncompliance has accrued to Tank Transport as a result of the violations described herein; and
3. Pursuant to the Audit Policy, EPA will not assess a civil penalty against Tank Transport for the disclosed violations.

Reservation of Rights

1. If, and to the extent, that any information or statement provided by Tank Transport upon which this NOD is based, was materially false or inaccurate at the time such information or statement was provided to EPA, EPA reserves the right to revoke this NOD and, thereby, render such NOD null and void. Such revocation shall be in writing and shall become effective upon receipt by Tank Transport.
2. If, and to the extent, that any information or statement provided by Tank Transport upon which any civil penalty mitigation granted herein for such violations was based, was materially false or inaccurate at the time such information or statement was provided to EPA, EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. Such revocation shall be in writing and shall become effective upon receipt by Tank Transport.

3. Nothing herein shall be construed to limit the authority of EPA and/or the United States to undertake action against any person, including Tank Transport, in response to any condition which EPA or the United States determines may present an imminent and substantial endangerment to the public health, welfare or the environment. Furthermore, issuance of this NOD does not constitute a waiver by EPA and/or the United States of its right to bring an enforcement action, either civil or criminal, against Tank Transport for any other violation of any federal or state statute, regulation, or permit.

4. In issuing this NOD, EPA seeks to promote self-auditing by Tank Transport, and expects Tank Transport to be in full compliance with all environmental requirements and to continue the internal procedures necessary to prevent recurrences of violations of environmental requirements.



Bruce C. Buckheit, Director
Air Enforcement Division
Office of Regulatory Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

Date: 4/15/02