

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

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| In the matter of: |) | U.S. EPA Docket No. |
| |) | CWA-09-2024-0042 |
| |) | |
| Shasta-Siskiyou Transport |) | |
| P.O. Box 990327 |) | CWA SECTION 311 |
| Redding, California 96099 |) | CLASS II ADMINISTRATIVE PENALTY |
| |) | CONSENT AGREEMENT AND |
| |) | FINAL ORDER PURSUANT TO |
| Respondent. |) | 40 C.F.R. §§ 22.13(b) and 22.18 |
| |) | |
| _____ |) | |

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)(ii) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1321(b)(6)(A), (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 IX, pursuant to Delegation 2-52A 1200 TN 350 (January 18, 2017), who has in turn delegated them to the EPA Region IX Director of the Enforcement Division (now the “Enforcement & Compliance Assurance Division”) (“Complainant”), pursuant to Delegation R9 2-52A (March 8, 2017).
2. Complainant initiates this proceeding against Shasta-Siskiyou Transport (“Respondent”) for alleged violations of Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3). 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) and 22.18(b)(2) and (3).

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...."
7. "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...."
8. "Navigable waters" are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7).
9. In accordance with Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), the President, through a delegation to EPA, has determined, by regulation, the quantities of oil that may be harmful to the public health or welfare or the environment of the United States. Executive Order No. 11735, 38 Fed. Reg. 21243 (August 3, 1973). Discharges of oil in such quantities as may be harmful include discharges of oil that "[c]ause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines." 40 C.F.R. § 110.3. *See also* Executive Order 12777, 56 Fed. Reg. 54757 (October 22, 1991).
10. Pursuant to Section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A), an owner, operator, or person in charge of any vessel, onshore facility, or offshore facility from which oil is discharged in violation of Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), may be assessed a class I or class II civil penalty.
11. "Owner or operator" is defined in Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), in pertinent part, as "in the case of an onshore facility, ...any person owning or operating such onshore facility...."
12. According to Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7), "person" includes an individual, firm, corporation, association, and a partnership.

13. “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.”

C. General Allegations

14. EPA alleges Shasta-Siskiyou Transport is a commercial fueling transport company incorporated in California with an address at P.O. Box 990327, Redding, California 96099. Respondent 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).
15. EPA alleges Respondent is or was the “owner or operator” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of a tanker truck that was carrying TransMix (a mixture of gasoline, diesel fuel, and other petroleum distillates), at the intersection of Pine Street and East Street in downtown Redding, California on January 21, 2022 when it overturned. The tanker truck was damaged and discharged TransMix into nearby storm drains, including drains which led directly into Calaboose Creek and subsequently into the Sacramento River.
16. EPA alleges the tanker truck is an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10). The TransMix that the tanker truck was transporting when it overturned was “oil” within the meaning of Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).
17. EPA alleges that oil was discharged into or upon the Sacramento River, which in turn flows into the San Francisco Bay and the Pacific Ocean, and each is a “navigable water” of the United States as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7).
18. EPA alleges that on January 21, 2022, Respondent’s overturned tanker truck 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).

D. Civil Penalty

19. 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 day for each day during which the violation continues, up to a maximum penalty 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 \$22,324 per day for each day during which the violation continues, up to a maximum Class II civil penalty of

\$279,036. See also Civil Monetary Penalty Inflation Adjustment, 88 Fed. Reg. 988 (Jan. 6, 2023).

20. Respondent consents to the assessment of and agrees to pay a civil penalty of TWO HUNDRED EIGHT THOUSAND AND EIGHT HUNDRED FORTY DOLLARS AND FORTY-SIX CENTS (\$208,840.46) in full settlement of the federal civil penalty claims set forth in this CA/FO. The penalty was calculated based on the nature, circumstances, extent, and gravity of the alleged 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.

E. Parties Bound

21. This CA/FO shall apply to and be binding upon Respondent, its successors, and assigns. Changes in ownership, including but not limited to any transfer of assets or real or personal property, shall not alter Respondent's obligations under this CA/FO.

22. Respondent's signatory to this CA/FO certifies that they are fully authorized to enter into and bind Respondent to the terms of the CA/FO.

F. Payment of Civil Penalty

23. Respondent shall submit payment of the TWO HUNDRED EIGHT THOUSAND AND EIGHT HUNDRED FORTY DOLLARS AND FORTY-SIX CENTS (\$208,840.46) within thirty (30) days of the Effective Date as specified in Paragraphs 24 and 25 of this CA/FO.

24. The payment shall indicate the Respondent's name and address and the EPA docket number of this action. Payment shall be made by one of the payment methods described at <https://www.epa.gov/financial/makepayment>. If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at (513) 487-2091.

25. **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, including proof of the date payment was made, shall be sent via electronic mail with a transmittal letter, indicating Respondent's name, the case title, and docket number, 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

26. 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 24 and 25 above.
27. Respondent's failure to make the payment in full within thirty (30) days of the Effective Date 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.
28. 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

29. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding in Docket No. CWA-09-2024-0042, Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CA/FO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the CA/FO; (iii) consents to any and all conditions specified in this CA/FO and to the assessment of the civil administrative penalty under Section D of this CA/FO; (iv) waives any right to contest the allegations contained in Section C of the CA/FO; and (v) waives the right to appeal the proposed final order contained in this CA/FO.

H. Reservation of Rights

30. This CA/FO, inclusive of all exhibits and attachments, is the entire agreement between the Parties to resolve EPA's civil penalty claims against Respondent for the specific CWA violations alleged herein. In accordance with 40 C.F.R. § 22.18(c), full compliance with this CA/FO shall only resolve Respondent's liability for federal civil penalties for the violations specifically alleged herein and does not in any case affect the right of the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

31. This CA/FO does not constitute a waiver, suspension, or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this CA/FO resolves only Respondent's civil liability for the violations and facts alleged in this CA/FO.
 32. This CA/FO shall in no way affect the right of EPA or the United States against any third party or the right of any third party against Respondent. This CA/FO does not create any right in or grant any cause of action to any third party.
- I. Miscellaneous**
33. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
 34. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
 35. 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 CA/FO is determined to be unenforceable by a competent court or tribunal, it is the Parties' intent that the remaining portions shall remain in full force and effect.
 36. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.
 37. EPA and Respondent consent to entry of this CA/FO without further notice.
 38. By signing this CA/FO, Respondent acknowledges that this CA/FO will be available to the public and agrees that this CA/FO does not contain any confidential business information or personally identifiable information.
 39. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order and settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000

for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at sherrer.dana@epa.gov, within 30 days after the Final Order ratifying this CA/FO is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the Effective Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:
 - i. notify EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the Effective Date of this CA/FO per paragraph 40; and
 - ii. provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

J. Effective and Termination Dates

40. 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").

41. This CA/FO shall terminate when Respondent has fully complied with its terms.

K. Public Notice

42. 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 CA/FO is subject to public notice and comment prior to issuance of the proposed Final Order.

43. 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 Shasta-Siskiyou Transport
Redding, California*

For Complainant U.S. Environmental Protection Agency Region IX:

/s/ April 4, 2024

Amy C. Miller-Bowen, Director
Enforcement and Compliance Assurance Division

*In the Matter of Shasta-Siskiyou Transport
Redding, California*

For Respondent Shasta-Siskiyou Transport:

William Casparino “/s/”

Date: 3/20/2024

William Casparino, President
Shasta-Siskiyou Transport

FINAL ORDER

It Is Hereby Ordered that this Consent Agreement and Final Order (EPA Docket No. CWA-09-2024-0042) be entered and that Respondent shall pay a civil penalty in the amount of TWO HUNDRED EIGHT THOUSAND AND EIGHT HUNDRED FORTY DOLLARS AND FORTY-SIX CENTS (\$208,840.46) in accordance with the terms of this Consent Agreement and Final Order.

Beatrice Wong
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 9