

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of:

U.S. EPA Docket No.
CWA-09-2024-0076

OMG Partners Inc.

705 N. Tully Road

Turlock, CA 95380

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
)

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") ("EPA"), pursuant to Delegation R9 2-52A (March 8, 2017).
2. EPA initiates this proceeding against OMG Partners Inc. ("Respondent") for alleged violations of Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3). EPA 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, oil refuse, and oil mixed with wastes...."
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 and Alleged Violation

14. EPA alleges OMG Partners Inc. is a commercial fueling transport company, incorporated in California, with an address at 705 N. Tully Road, Turlock. Respondent is a "person" within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. §§ 1321(a)(7).
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 approximately 8,500 gallons of unleaded gasoline, on Interstate 680 northbound in Fremont, California on December 21, 2021, when it overturned at approximately 4:40 am ("Incident"). The tanker truck was damaged and discharged unleaded gasoline onto the roadway, into adjacent storm drains, and into Laguna Creek, which flows into Coyote Creek and the Don Edwards National Wildlife Refuge and subsequently into the San Francisco Bay.
16. NRC Incident Reports calculated the discharge volume at 7,900 gallons of unleaded gasoline. EPA's on-scene coordinator ("OSC") observed sheening in Laguna Creek, Mud Slough, and Coyote Creek, and later in Agua Caliente Creek where it meets Laguna Creek. EPA's OSC also observed a strong gasoline odor at Laguna Creek where sheen was present and both odor and soil sheening in the engineered channel.
17. The Fremont Police Department coordinated evacuations of approximately 100 nearby residences due to the flammability hazard in proximity to the Incident, and lifted the order at 14:20 on December 24, 2021, approximately 10 hours after the Incident occurred.
18. EPA alleges that 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 unleaded gasoline 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).
19. EPA alleges that oil was discharged from the tanker truck into or upon the Coyote Creek, which in turn flows into the Don Edwards National Wildlife Refuge, 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).

20. EPA alleges that on December 24, 2021, 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

21. 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, violations that occurred after November 2, 2015, where penalties are assessed on or after December 27, 2023, the administrative assessment of civil penalties for a Class II civil penalty may not exceed \$23,048 per day for each day during which the violation continues, up to a maximum of \$288,080. See *also* Civil Monetary Penalty Inflation Adjustment, 88 Fed. Reg. 89310 (Dec. 27, 2023).
22. Respondent consents to the assessment of and agrees to pay a civil penalty of ONE HUNDRED FORTY THOUSAND DOLLARS (\$140,000), based on a demonstrated ability to pay analysis, in full settlement of the federal civil penalty liability for the violations and facts set forth in this CA/FO. Pursuant to 40 C.F.R. Part 22.18(c). 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

23. This CA/FO shall apply to and be binding upon Respondent, Respondent's officers, directors, partners, agents, employees, contractors, successors and assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO. 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.
24. 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

25. Respondent agrees to pay a civil penalty in the amount of ONE HUNDRED FORTY THOUSAND DOLLARS (\$140,000) ("Assessed Penalty"), based on a demonstrated ability

to pay analysis, within thirty (30) days after the date the Final Order ratifying this consent agreement becomes final. The Final Order shall become final thirty (30) days after the date the Final Order ratifying this agreement is filed with the Regional Hearing Clerk ("Filing Date").

26. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website:

<https://www.epa.gov/financial/makepayment>.

For additional instructions see:

<https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

Checks should be made payable to:

Treasurer, United States of America

And reference:

"Oil Spill Liability Trust Fund- 311" or "OSLTF- 311."

27. When making a payment, Respondent shall:

Identify every payment with Respondent's name and the docket number of this Agreement.

Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following persons via electronic mail:

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

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

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
CINWD_AcctsReceivable@epa.gov

28. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

G. Interest. Charges. and Penalties on Late Payments

29. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.

Interest.

Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS standard underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.

Handling Charges.

Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.

Late Payment Penalty.

A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Filing Date.

Late Penalty Actions.

In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset {i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

Allocation of Payments.

Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

Tax Treatment of Penalties.

Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

G. Admissions and Waivers of Rights

30. In accordance with 40 C.F.R. § 22.18(b)(2), for the purpose of this proceeding,, Respondent: {i) admits the jurisdictional allegations of this CA/FO; {ii) neither admits nor denies specific factual allegations contained in the CA/FO; {iii) consents to the assessment of any stated civil penalty and to any conditions specified in this CA/FO; {iv) waives any right to contest the allegations specified in this CA/FO; and {v) waives any right to appeal the proposed final order accompanying this consent agreement.

H. Reservation of Rights

31. 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.

32. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations. This CA/FO shall in no way relieve or affect Respondent's obligations under any applicable federal, state or local laws, regulations, or permits.

I. Miscellaneous

33. This CA/FO can be signed in counterparts.
34. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
35. Each party shall bear its own costs and attorneys' fees.
36. EPA and Respondent consent to entry of this CA/FO without further notice.
37. 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.
38. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), the \$140,000 paid pursuant to Section F is restitution, remediation, or required to come into compliance with the law.
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 Effective Date, 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 Date

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").

K. Public Notice

41. 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.

42. 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 OMG Partners Inc.
Fremont, California*

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

AMY MILLER- Digitally signed by
BOWEN AMY MILLER-BOWEN
Date: 2024.07.08
11:45:12 -07'00'

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

Date:

*In the Matter of OMG Partners Inc.
Fremont, California*

For Respondent OMG Partners Inc.:

A handwritten signature in black ink, appearing to read 'Mary Gomes', written over a horizontal line.

ary Gomes

CEO OMG Partners Inc.

Date: **5-29-2024**

*In the Matter of OMG Partners Inc.
Fremont, California*

FINAL ORDER

It Is Hereby Ordered that this Consent Agreement and Final Order (EPA Docket No. CWA-09-2024-00_) be entered and that Respondent shall pay a civil penalty in the amount of ONE HUNDRED FORTY THOUSAND DOLLARS (\$140,000) in accordance with the terms of this Consent Agreement and Final Order.

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