

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

Received by
EPA Region 1
Hearing Clerk

In the matter of)
)
GOGUEN TRANSPORTATION INC.)
)
100 Baker Street (Rear))
Gardner, MA 01440)
)
Respondent.)

Docket No. CWA-01-2022-0040

**CONSENT AGREEMENT AND
FINAL ORDER FOR CLASS II
CIVIL PENALTY UNDER THE
CLEAN WATER ACT**

The United States Environmental Protection Agency, Region 1 (“EPA”) issues, and Goguen Transportation Inc. (Respondent) consents to, this Consent Agreement and Final Order (“CAFO”). EPA alleges that Respondent violated Section 311(b)(3) of the Clean Water Act (“CWA”), 33 U.S.C. § 1321(b)(3). Specifically, EPA alleges that Respondent discharged oil into waters of the United States in violation of the CWA. The parties agree to resolve this action by the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) of EPA’s *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, at 40 C.F.R. part 22 (“*Consolidated Rules*”).

STATUTORY AND REGULATORY AUTHORITY

1. EPA takes this action under the authority of Sections 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).
2. Pursuant to Section 311(b)(6)(C)(i), 33 U.S.C. § 1321(b)(6)(C)(i), EPA provided public notice of, and reasonable opportunity to comment on, this action.
3. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil, as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), into or upon the navigable waters of the United States or adjoining shorelines in such quantities as may be harmful, as

determined under Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4).

4. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the Act, EPA has determined that an oil discharge “may be harmful” to the public health or welfare or the environment of the United States if it causes either: (1) a violation of applicable water quality standards; (2) a film or sheen upon, or discoloration of the surface of the water or adjoining shorelines; or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines (“harmful quantity”).

5. “Navigable waters” of the United States are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), as “waters of the United States.”

6. Section 311(b)(6)(A)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(A)(i), provides for the assessment of penalties for owners, operators, or persons in charge of onshore facilities from which oil or a hazardous substance is discharged in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

7. Under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), EPA may seek Class II administrative civil penalties for violations of Section 311(b)(6)(A)(ii) of the CWA, up to a maximum amount not exceeding \$125,000. Pursuant to the *Civil Monetary Penalty Inflation Adjustment Rule*, 87 Fed. Reg. 1676 (January 12, 2022), that amount has increased up to a maximum of \$258,978, for violations that occurred after November 2, 2015, and are assessed after January 15, 2022.

FINDINGS OF FACT

8. On two separate occasions, tank trailer trucks owned and operated by Respondent discharged fuel oil into waters of the United States in violation of Section 311 of the Act.

9. Respondent is a corporation organized under the laws of the Commonwealth of

Massachusetts with its facility located at 100 Baker Street in Gardner, Massachusetts and, therefore, is a “person” within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7).

10. Respondent is the “owner or operator,” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of the tank trailer trucks involved in each oil spill.

11. Each tank trailer truck is considered an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2.

Findings of Fact Regarding Revere Oil Spill

12. On October 13, 2021, a tank trailer truck owned by Respondent and carrying approximately 10,000 gallons of No. 2 fuel oil rolled over while navigating a traffic circle in Revere, Massachusetts. The tank trailer truck was compromised and released its entire contents.

13. The release of fuel oil from Respondent’s tank trailer truck on October 13, 2021, constitutes a “discharge” as defined by Section 311(a)(2) of the Act, 33 U.S.C. § 1321(a)(2) of “oil,” as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

14. Respondent estimates that approximately 3,000 to 5,000 gallons of the released fuel oil entered storm water catch basins that discharge through drainpipes into Rumney Marsh and salt marsh drainage channels which flow into Diamond Creek. Diamond Creek flows into the Pines River, which in turn flows into Broad Sound (Lynn Harbor) and ultimately to the Atlantic Ocean.

15. The waters listed in Paragraph 14, supra, are each “waters of the United States” as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1 and are therefore subject to the jurisdiction of Section 311 of the Act, 33 U.S.C. § 1321.

16. The released oil created a sheen on the surface of waters in Rumney Marsh,

Diamond Creek, and the Pines River. In addition, released oil accumulated on the shoreline of the salt marsh, Diamond Creek, and the Pines River and impacted waterfowl. Accordingly, the October 13, 2021, release constitutes a discharge of oil as “may be harmful” pursuant to 40 C.F.R. § 110.3.

Findings of Fact Regarding Athol Oil Spill

17. On December 22, 2021, a tank trailer truck owned by Respondent and carrying approximately 10,000 gallons of oil rolled over at an intersection in Athol, Massachusetts. The tank trailer truck was compromised and released approximately 4,500 gallons of oil into Mill Brook.

18. The release of fuel oil from Respondent’s tank trailer truck on December 22, 2021, into Mill Brook constitutes a “discharge” as defined by Section 311(a)(2) of the Act, 33 U.S.C. § 1321(a)(2) of “oil,” as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

19. The oil released from the tank trailer truck on December 22, 2021, immediately entered Mill Brook, a tributary of Millers River, as well as Millers River itself, which flows to the Connecticut River.

20. The waters listed in Paragraph 19, *supra*, are each “waters of the United States” as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1 and are therefore subject to the jurisdiction of Section 311 of the Act, 33 U.S.C. § 1321.

21. The released oil created a sheen on the surface waters of both Mill Creek and Millers River. In addition, released oil accumulated on the shoreline of Mill Creek. Accordingly, the December 22, 2021, release constitutes a discharge of oil as “may be harmful” pursuant to 40 C.F.R. § 110.3.

CONCLUSIONS OF LAW

22. Respondent's discharges of oil into navigable waters of the U.S. in a quantity that has been determined may be harmful under 40 C.F.R § 110.3 constitute two separate violations of Section 311(b)(3) of the CWA.

CONSENT AGREEMENT

23. EPA and Respondent agree that settlement of this cause of action is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter. Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

24. Respondent admits the jurisdictional allegations set forth in this CAFO and waives any defenses it might have as to jurisdiction and venue.

25. Respondent neither admits nor denies the factual or non-jurisdictional allegations contained herein.

Waiver of Rights

26. Respondent waives the right to a hearing under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and to any appeal of the Final Order in this matter under Sections 311(b)(6)(G)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(G)(ii). Respondent consents to the issuance of a Final Order without further adjudication.

Penalty

27. EPA proposes, and Respondent consents to, the assessment of a civil penalty of \$35,354 for the violations alleged in this CAFO.

28. In agreeing to the penalty described in the previous paragraph, EPA has taken into

account the statutory penalty factors at Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8).

29. Respondent shall pay the penalty of \$ \$35,354 for the violations of Section 311 of the CWA, 33 U.S.C. § 1321 alleged herein, within 10 days of the date this Consent Agreement becomes final.

30. Respondent shall make the payment by cashier's or certified check, or by wire transfer. Respondent shall include the case name and docket number (*In the Goguen Transportation Inc.*; Docket No. CWA-01-2022-0040) and write "Oil Spill Liability Trust Fund-311" on the face of the check or wire transfer confirmation. A check should be payable to "Treasurer, United States of America" and shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. Environmental Protection Agency / Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

In addition, at the time of payment, Respondent should also forward notice of payment of

the civil penalty as well as copies of the payment check or payment receipt either via email or in hard copy to:

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: 04-6
Boston, Massachusetts 02109-3912
R1_Hearing_Clerk_Filings@epa.gov

and

Laura Beveridge, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: 04-3
Boston, Massachusetts 02109-3912
beveridge.laura@epa.gov

31. Pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), a failure by Respondent to pay the penalty assessed by this CAFO in full by its due date shall subject Respondent to a civil action to collect the assessed penalty, plus interest at the prevailing rates, from the date this Agreement becomes final. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(b), promulgated under 31 U.S.C. § 3717. Any person who fails to pay on a timely basis the amount of an assessed penalty shall be required to pay, in addition to such amount and interest, attorney's fees, costs for collection proceedings, and a quarterly nonpenalty payment for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of such person's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

General Provisions

32. The provisions of this CAFO shall apply to and be binding on Respondent, its officers, directors, successors, and assigns.

33. The civil penalty provided under this CAFO, and any interest, nonpayment penalties, and charges described in this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not tax deductible for purposes of federal, state, or local law. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agree not to use those payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

34. This CAFO does not constitute a waiver, suspension, or modification of the requirements of the CWA or any regulations or permits promulgated thereunder. Payment of the penalty pursuant to this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in this CAFO.

35. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

36. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which the Complaint and this CAFO is based, or for Respondent's violation of any applicable provision of law.

37. Except as described in paragraph 31 above, the parties shall bear their own costs and fees in this action, including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

38. Respondent's obligations under the CAFO shall end when it has paid in full the scheduled civil penalty, and any interest and nonpayment penalties, required by this CAFO.

39. The terms, conditions, and requirements of this CAFO may not be modified or amended except upon the written agreement of all parties, and approval of a Regional Administrator or his or her properly authorized delegate.

40. Respondent agrees to acceptance of both (a) EPA's digital or an original signature on this CAFO and (b) service of the fully executed CAFO on the Respondent by mail or electronically by e-mail. EPA agrees to acceptance of the Respondent's digital or an original signature on this CAFO.

41. Respondent understands that the mailing or e-mail address may be made public when the CAFO and Certificate of Service are filed and uploaded to a searchable database.

42. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

FOR RESPONDENT GOGUEN TRANSPORTATION INC.



Date: 6/14/22

Clayton R. Goguen
Name, Title (printed)

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

Karen McGuire, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 1

Date: _____

FINAL ORDER

1. EPA has provided public a thirty-day opportunity for public notice and comment on this proposed CAFO, pursuant to Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45(b).

2. The foregoing Consent Agreement is hereby ratified and incorporated by reference into this Final Order.

3. Respondent is hereby ordered to comply with the terms of the above Consent Agreement, which will become final 30 days from the date it is signed by the Regional Judicial Officer unless a petition to set aside the Final Order is filed by a commenter pursuant to Section 311(b)(6)(C)(iii) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(iii), and 40 C.F.R. Part 22.

Date: _____

LeAnn Jensen
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1