



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 8
 1595 WYNKOOP STREET
 DENVER, CO 80202-1129
 Phone 800-227-8917
<http://www.epa.gov/region08>

2016 SEP 12 PM 4:31

FILED
 EPA REGION VIII
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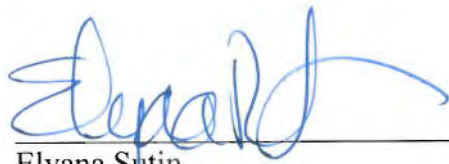
DOCKET NO.: CWA-08-2016-0015

IN THE MATTER OF:)
)
 Dakota Petroleum Transport Solutions, LLC) FINAL ORDER
)
)
)
)
)
)
 RESPONDENT)

Pursuant to 40 C.F.R. §22.13(b) and 22.18(b)(2)(3), of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 12th DAY OF September, 2016.



 Elyana Sutin
 Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)

Dakota Petroleum Transport)
Solutions, LLC)

Respondent.)

) Docket No. CWA-08-2016-0015

) **COMBINED COMPLAINT AND**
) **CONSENT AGREEMENT**

) **Proceeding to Assess Civil Penalty**
) **Under Section 311**
) **of the Clean Water Act**
)

The U.S. Environmental Protection Agency, Region 8 (EPA), and Dakota Petroleum Transport Solutions, LLC (Respondent), by their undersigned representatives, hereby consent and agree as follows:

I. AUTHORITY

1. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. This Combined Complaint and Consent Agreement (CCCA) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and is executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. EPA has jurisdiction over this matter pursuant to section 311(b)(6) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6).

II. PARTIES BOUND

3. This CCCA, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, agents, successors and assigns. Each signatory to this CCCA certifies that they are authorized to execute and legally bind the party they represent to this CCCA.

III. STATEMENT OF THE PARTIES

4. Respondent admits the jurisdictional allegations contained herein and neither admits nor denies the specific factual allegations contained herein.

5. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CCCA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701 – 706.
6. EPA asserts that settlement of this matter is in the public interest, and EPA and Respondent agree that entry of this CCCA and its incorporation into a Final Order without further litigation and without adjudication of any issue of fact or law will avoid prolonged and complicated litigation between the parties.
7. This CCCA, upon incorporation into a Final Order and full satisfaction by the parties, shall be a complete and full resolution of Respondent's liability for federal civil penalties for the violations alleged below.

IV. STATUTORY AND REGULATORY FRAMEWORK

8. The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. 33 U.S.C. § 1251(a).
9. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), in pertinent part, prohibits discharging oil into or upon the navigable waters of the United States in such quantities as may be harmful as determined under section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4).
10. For purposes of section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), EPA has determined, as set forth in 40 C.F.R. § 110.3, that a discharge of oil may be harmful to the public health or welfare or the environment of the United States if that discharge (a) violates applicable water quality standards or (b) causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or causes a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.
11. Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), directed the President to make the determination referenced in paragraph 10 above. The President delegated the authority to make this determination to the Administrator of the EPA by Executive Order No. 12777 (56 Fed. Reg. 54757, October 21, 1991) and Executive Order No. 11735 (38 Fed. Reg. 21243, August 7, 1973).

V. GENERAL ALLEGATIONS

12. Respondent is and was at all relevant times a limited liability company organized under the laws of Minnesota and authorized to do business in the State of North Dakota. Respondent's principal office is located in Wayzata, Minnesota.

13. Respondent is and was at all relevant times a “person” within the meaning of sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5).
14. At all times relevant to this CCCA, Respondent owned and/or operated an “onshore facility” as defined in section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2, known as the Dakota Petroleum Transport Solutions Transloading Facility (Facility). At all times relevant to this CCCA, the Facility was used for transloading oil.
15. Respondent is therefore an “owner or operator,” as defined in section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6).
16. The oil referenced in paragraph 14 above meets the definition of “oil” in section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2.
17. When discharged into water, the oil referenced in paragraphs 14 and 16 above, also meets the definition of “pollutant” in section 502(6) of the CWA, 33 U.S.C. § 1362(6).
18. Due to its location, the Facility could reasonably be expected to discharge oil and/or other pollutants to the Missouri River, via Lake Sakakawea, and/or its adjoining shorelines and/or tributaries of the Missouri River and/or wetlands adjacent to those tributaries in quantities that would a) violate applicable water quality standards or (b) cause a film or a sheen upon or discoloration of the surface of the navigable waters of the United States or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of such waters or their adjoining shorelines.
19. Lake Sakakawea was created by the Garrison Dam across the Missouri River. The Missouri River is a “navigable water” as defined in section 502(7) of the CWA, 33 U.S.C. § 1362(7).

VI. SPECIFIC ALLEGATIONS

20. On or about May 4, 2012, a discharge of approximately 65 barrels of crude oil occurred when a railcar, which was being transloaded with crude oil from a tanker truck, was overfilled.
21. The Respondent initiated containment and recovery activities, however, an unquantified amount of the discharge described in paragraph 20 above migrated to a wetland area and an unnamed tributary that handles stormwater runoff from the City of New Town area and ultimately flows into the Missouri River, via Lake Sakakawea.
22. The discharge referenced in paragraph 20 above violated water quality standards, caused a film or sheen upon or discoloration of the surface of the water and/or its adjoining shorelines, and/or caused a sludge or emulsion to be deposited beneath the surface of the water(s) and/or upon the adjoining shorelines of the unnamed tributary to the Missouri River.

23. EPA learned of the discharge referenced in paragraph 20 above after Respondent reported the discharge to the United States Coast Guard National Response Center (NRC) on or about May 6, 2012 (NRC Report No. 1010721).

VII. EPA'S FINDINGS OF VIOLATION

24. The release of crude oil referenced in paragraph 20 above was at all relevant times a "discharge" within the meaning of section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2).
25. The discharged crude oil referenced in paragraph 20 above was at all relevant times "oil" within the meaning of section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).
26. The oil that was discharged into an unnamed tributary of the Missouri River, and upon its adjoining shorelines as a result of the crude oil release referenced in paragraph 20 above was discharged in "quantities as may be harmful" within the meaning of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3.
27. Therefore, Respondent's discharge of oil referenced in paragraph 20 above constitutes a violation of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

VIII. CIVIL PENALTY

28. Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. part 19 authorize the assessment of a Class I civil penalty for violations of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).
29. Pursuant to section 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6)(A), and after consideration of the facts of this case as they relate to the factors set forth in section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), EPA has determined that a civil penalty of twenty-four thousand and no/100 dollars (\$24,000.00) is appropriate to settle this matter.
30. Respondent consents and agrees to pay a civil penalty in the amount of twenty-four thousand and no/100 dollars (\$24,000.00) in the manner described below:
- a. Payment shall be in six installments. The first installment is due no later than 30 calendar days from the date of the Final Order issued by the Regional Judicial Officer. The remaining installments are due 30, 60, 90, 120, and 150 days, respectively, after the due date for the first installment. The first five installments shall be in the amount of \$4,011.84 each. The last installment shall be in the amount of \$3,991.98. The amount of \$51.18 constitutes interest on an agreed-upon settlement of \$24,000.00.

- b. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Time to be considered as received that day.
- c. The payment shall be made by remitting a check or making a wire transfer or on-line payment. If paying by check, Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notations "OSLTF - 311" and the title and docket number of this case. The payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. Environmental Protection Agency
P.O. Box 979077
St. Louis, Missouri 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank
Government Lockbox No. 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
Contact: Craig Steffen, 513-487-2091, steffen.craig@epa.gov

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
Beneficiary: US Environmental Protection Agency

If remitted through the Automated Clearing House (ACH) for receiving U.S. currency:

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 -- checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737
Contacts: REX (Remittance Express): 866-234-5681

If remitted online with a debit card or credit card: No user name, password, or account number is necessary for this option. Online payment can be accessed via WWW.PAY.GOV, entering SFO 1.1 in the form search box on the left side of the screen, opening the form, and following the directions on the screen.

Copies of the check or record of payment shall be sent to:

Darla Hohman
U.S. Environmental Protection Agency (8ENF-UFO)
1595 Wynkoop Street
Denver, Colorado 80202-1129

and

Melissa Haniewicz
Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
1595 Wynkoop Street
Denver, Colorado 80202-1129

A transmittal letter identifying the case title and docket number must accompany the remittance and copies of the check.

31. If the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received.
32. A handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 30 days of the due date. Payments are first applied to outstanding handling

charges, second to penalty assessments, third to accrued interest, and then to the outstanding principal amount.

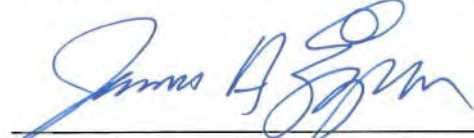
33. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

IX. GENERAL PROVISIONS


34. Nothing in this CCCA shall relieve Respondent of the duty to comply with the CWA and any regulation, order, or permit issued pursuant to the CWA.
35. Any failure by Respondent to comply with this CCCA shall constitute a breach of this CCCA and may result in referral of the matter to the United States Department of Justice for enforcement of this CCCA and such other relief as may be appropriate.
36. Nothing in this CCCA shall be construed as a waiver by EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of any failure by Respondent to comply with this CCCA.
37. Each party shall bear its own costs and attorneys' fees in connection with this matter.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,**

Date: 9/12/16

By: 
James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice

Date: 9/12/16


By: 
Stephanie DeJong, Acting Supervisor
OPA Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice

United States Environmental Protection Agency, Region 8
1595 Wynkoop Street (8-ENF)
Denver, Colorado 80202-1129

Complainants

**DAKOTA PETROLEUM TRANSPORT SOLUTIONS,
LLC,**

Date: 09-07-16

By: 
Gabe Claypool
Manager
294 Grove Lane East
Wayzata, Minnesota 55391

Respondent

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT and FINAL ORDER** in the matter of **DAKOTA PETROLEUM TRANSPORT SOLUTIONS, LLC; DOCKET NO.: CWA-08-2016-0015** was filed with the Regional Hearing Clerk on September 12, 2016.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Abigail Dean, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on September 12, 2016, to:

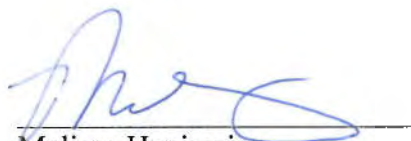
Respondent

Gabe Claypool
Dakota Petroleum Transport Solutions, LLC
294 Grove Lane East
Wayzata, Minnesota 55391

And emailed to:

Jessica Farmer
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

September 12, 2016


Melissa Haniewicz
Regional Hearing Clerk

