

11/23/2022

7:51am

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

Received by  
EPA Region VIII  
Hearing Clerk

IN THE MATTER OF: )

Red Mountain Truck Lines, Inc. )

Respondent )

**CONSENT AGREEMENT**

Docket No. CWA-08-2023-0002

**I. INTRODUCTION**

1. This is an administrative penalty assessment proceeding pursuant to sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits* (Consolidated Rules of Practice), as codified at 40 C.F.R. part 22.
2. The parties to this proceeding are the undersigned U.S. Environmental Protection Agency (EPA) official (Complainant) and Red Mountain Truck Lines, Inc. (Respondent).
3. This matter concerns a discharge of diesel fuel occurring on January 30, 2021, when a fuel supply truck owned and/or operated by Respondent was filling a storage tank in Butte, Montana.
4. The parties, having agreed settlement of this action is in the public interest, consent to the entry of this consent agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

**II. JURISDICTION**

5. This Agreement is issued under the authority of section 311(b) of the Clean Water Act (Act), 33 U.S.C. § 1321(b). This is a Class I proceeding, as described in section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i).
6. This proceeding is subject to the Consolidated Rules of Practice, under which this proceeding may be resolved by a final order from a Regional Judicial Officer or Regional Administrator ratifying this Agreement. The final order will simultaneously commence and conclude this proceeding. 40 C.F.R. § 22.13(b).

**III. GOVERNING LAW**

**A. Oil Discharge Prohibition**

7. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), 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 Act, 33 U.S.C. § 1321(b)(4).

8. Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), directed the President to determine by regulation, for purposes of section 311 of the Act, those quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare of the United States, including but not limited to fish, shellfish, wildlife and public and private property, shorelines, and beaches. The President delegated the authority to make this determination to the EPA Administrator in section 8(a) of Executive Order No. 12777 (56 Fed. Reg. 54757, October 21, 1991).
9. In response to the directive referenced in paragraph 8, above, the EPA Administrator promulgated 40 C.F.R. § 110.3. That regulation provides 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.
10. Consequently, a discharge of oil that (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 is prohibited by section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

#### **B. Enforcement**

11. Any owner or operator of any onshore 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 an administrative civil penalty by the EPA, according to section 311(b)(6)(A)(i) of the Act, 33 U.S.C. § 1321(b)(6)(A)(i). As adjusted for inflation pursuant to 40 C.F.R. part 19, the maximum class I penalty for violations occurring after November 2, 2015, where penalties are assessed on or after January 12, 2022, is \$48,762. (See 87 Fed. Reg. 1676, 1678 (January 12, 2022).)

#### **IV. ALLEGATIONS OF FACT AND LAW**

The following allegations apply at all times relevant to this Agreement:

12. Respondent is a Montana corporation. Its registered agent for service of process in Montana is David Richards, 8790 U.S. Highway 10, Butte, Montana 59701.
13. Respondent is a “person” for purposes of section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 122.2.
14. On January 30, 2021, in the course of delivering fuel to the Town Pump Convenience Store at 3700 Harrison Avenue in Butte, Montana, Respondent discharged approximately 450 to 485 gallons of diesel fuel from its fuel supply truck into wetlands adjacent to Blacktail Creek and Blacktail Creek itself.
15. The diesel fuel referenced in paragraph 14, above, constitutes “oil” as defined in section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).
16. The discharge referenced in paragraph 14, above, caused a sheen on Blacktail Creek.

17. Blacktail Creek is a perennial tributary of Silverbow Creek. Silverbow Creek flows northwest and north from Butte and, at the confluence with Warm Springs Creek, becomes the Clark Fork River. The Clark Fork River is an interstate water and a perennial tributary of the Columbia River, another perennial, interstate water.
18. Blacktail Creek and the wetlands adjacent to Blacktail Creek, Silverbow Creek, the Clark Fork River, and the Columbia River are each a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2.
19. The fuel supply truck referenced in paragraph 14, above, is an “onshore facility” as that term is defined in section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).
20. Respondent is an “owner or operator” as that term is defined in section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of the truck referenced in paragraph 14, above.
21. The discharge referenced in paragraph 14, above, was a discharge of oil in such quantities as may be harmful, under section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

**V. ALLEGED VIOLATION OF LAW**

22. The discharge of diesel fuel described in paragraph 14, above, was a violation of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

**VI. TERMS OF CONSENT AGREEMENT**

23. For the purpose of this proceeding, Respondent:
  - a. admits the facts set forth in paragraph 3 of this Agreement;
  - b. admits the jurisdictional allegations in section II of this Agreement;
  - c. neither admits nor denies the factual allegations in sections IV and V of this Agreement;
  - d. consents to the assessment of a civil penalty as stated below;
  - e. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent’s compliance history in any subsequent enforcement action; and
  - f. waives any right to contest the allegations in this Agreement and to appeal any final order approving this Agreement.
24. In determining the amount of the penalty to be assessed, the EPA considered the seriousness of the violation or violations, the economic benefit to the Respondent, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the Respondent to minimize the effects of the discharge, the economic impact of the penalty on the Respondent, and any other matters as justice shall require.
25. Based on the allegations in sections IV and V, above, and having considered the penalty assessment

factors cited in paragraph 24, above, the Complainant has determined a civil penalty of \$18,000 is appropriate to settle this proceeding.

26. Penalty Payment. Respondent agrees to:

- a. pay a civil penalty in the amount of \$18,000 within 30 calendar days of date the final order approving this Agreement is issued;
- b. pay the civil penalty using any method provided on the website <https://www.epa.gov/financial/makepayment>;
- c. indicate each and every payment is payable to the “Environmental Protection Agency” and include in each and every payment a reference to (i) “Oil Spill Liability Trust Fund-311” and (ii) the docket number that appears on the final order approving this Agreement;
- d. within 24 hours of each payment, email proof of payment to Darla Hohman, Environmental Scientist, EPA Region 8, at [hohman.darla@epa.gov](mailto:hohman.darla@epa.gov) (whom the Complainant designates for service of proof of payment) and the Regional Hearing Clerk for EPA Region 8 at [R8\\_Hearing\\_Clerk@epa.gov](mailto:R8_Hearing_Clerk@epa.gov). “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order.

27. If Respondent fails to timely pay any portion of the penalty assessed under the final order approving this Agreement, the EPA may:

- a. request the Attorney General to bring a civil action under section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H), in an appropriate district court to recover the amount assessed, plus interest at currently prevailing rates from the date of the final order, attorney’s fees and costs for collection proceedings, and a 20% quarterly nonpayment penalty for each quarter during which failure to pay persists;
- b. refer the debt to a credit reporting agency or a collection agency under 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, under 40 C.F.R. part 13, subparts C and H; and
- d. suspend or revoke Respondent’s licenses or other privileges or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds under 40 C.F.R. § 13.17.

28. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.

29. This Agreement applies to Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Any change in ownership or corporate control of Respondent, including but not limited to any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Agreement.
30. The undersigned representative of Respondent certifies he or she has authority to bind Respondent to this Agreement.
31. Except as qualified by paragraph 27, above, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

## **VII. EFFECT OF CONSENT AGREEMENT**

32. In accordance with 40 C.F.R. § 22.18(c), compliance with the final order approving this Agreement resolves only Respondent's liability for federal civil penalties for the violations specifically alleged above.
33. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act, any regulation, order, or permit issued pursuant to the Act, and any other federal, state, or local laws, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
34. Nothing herein shall be construed to limit the power of the EPA to pursue injunctive or other equitable relief, or criminal sanctions, for any violations of law or to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
35. If and to the extent the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, the EPA reserves any and all of its legal and equitable rights.

## **X. SERVICE OF FINAL ORDER**

36. The contact information for the individuals authorized to receive service for each party are:

For Complainant:

Margaret J. (Peggy) Livingston  
Senior Enforcement Attorney  
1595 Wynkoop Street  
Denver, CO 80202  
303-312-6858  
Email: [livingston.peggy@epa.gov](mailto:livingston.peggy@epa.gov)

For Respondent:

Richard Baron, Counsel  
Foley, Baron, Metzger & Juip, PLLC  
38777 Six Mile Road, Suite 300  
Livonia, MI 48152  
(734) 742-1855  
Email: [rbaron@fbmjlaw.com](mailto:rbaron@fbmjlaw.com)

37. The parties consent to service of the final order approving this Agreement at the respective email addresses in paragraph 36, above.

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

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Janice Pearson, Manager  
RCRA and OPA Enforcement Branch  
**Complainant**

**RED MOUNTAIN TRUCK LINES, INC.  
Respondent**

Date: 11/21/2022

DocuSigned by:  
By: David F Richards  
844485AD83014E2  
David Richards, President