



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2013 JAN -8 AM 10:37

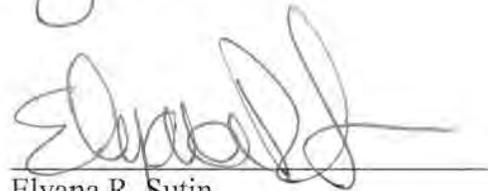
FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2013-0001

IN THE MATTER OF:)	
)	
GILCO TRANSPORTATION, INC.)	FINAL ORDER
23899 Highway 6)	
Rifle, CO 81650-8909)	
)	
RESPONDENT)	

Pursuant to 40 C.F.R. §22.18(b)(2), 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 Settlement Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 8th DAY OF January, 2013.



Elyana R. Sutin
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2013 JAN -8 AM 10: 37

Docket No.: CWA-08-2013-0001

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EPA REGION VIII
HEARING CLERK

IN THE MATTER OF

Gilco Transportation, Inc.)	
23899 Highway 6)	CONSENT AGREEMENT
Rifle, CO 81650-8909)	
)	
_____ Respondent.)	

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Gilco Transportation, Inc. (Gilco), by their undersigned representatives, hereby consent and agree as follows:

BACKGROUND

1. On October 1, 2012, EPA issued Gilco an Administrative Complaint and Notice of Opportunity for Hearing (Complaint) pursuant to its authority under section 311(b)(6)(B) of the Clean Water Act (Act), as amended by the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 1321(b)(6)(B). EPA alleged in the Complaint that Gilco discharged oil into a water of the United States from its vehicle (facility) in violation of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3). The Complaint proposed a civil penalty for the violations alleged therein.
2. Gilco admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint.
3. Gilco waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint or this Consent Agreement.

4. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon EPA, and Gilco, its successors, and assigns. Any change in ownership or corporate status of Gilco, including, but not limited to, any transfer of assets or real or personal property, shall not alter Gilco's responsibilities under this Agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

TERMS OF SETTLEMENT

CIVIL PENALTY

5. Gilco consents and agrees to pay a civil penalty in the amount of nine thousand twenty three dollars (\$9,023.00), in the manner described below in this paragraph:

- a. Payment is due within 30 calendar days from the date written on the Final Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by U.S. Bank described below. Payments received by 11:00 AM EST are processed on the same day, those received after 11:00 AM are processed on the next business day.
- b. The payment shall be made by remitting a cashier's or certified check, referencing the name and docket number of this case, and "Oil Spill Liability Trust Fund-311," for this amount, payable to "**Environmental Protection Agency**," to:

**U.S. checks by regular
U.S. postal service mail:**

U.S. EPA Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

**Federal Express, Airborne,
or other commercial carrier:**

US Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Wire transfers:

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

On Line Payment:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open form and complete required
fields.

Copies of the check or wire transfer shall be simultaneously sent to:

Donna K. Inman
U.S. EPA Region 8 (8ENF-UFO)
1595 Wynkoop Street
Denver, CO 80202-1129

Tina Artemis, Regional Hearing Clerk
U.S. EPA Region 8 (8RC)
1595 Wynkoop Street
Denver, CO 80202-1129

- c. In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the payment 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 the payment is received in full (i.e., on the 1st late day, 30 days of interest accrues).
- d. In addition to the accrual of interest specified in subparagraph 5.c. of this Agreement, a handling charge of fifteen dollars (\$15.00) shall be assessed on the 31st day from the date of the Final Order, and each subsequent 30-day period that the penalty, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if the penalty payment is not received within 90 days of the due date (i.e., the 121st day from the date the Final Order is signed). Payments are first applied to outstanding handling charges, 6%

penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

- e. Gilco agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

6. For settlement purposes only, Gilco shall undertake the performance of a Supplemental Environmental Project (SEP) as described in Appendix A, attached and incorporated herein, which the parties agree is intended to secure significant environmental and/or public health protection. This SEP has been reviewed by EPA's legal counsel for legal sufficiency and conformance with the 1988 SEP Policy (SEP Policy). The SEP is within EPA's legal authority to include in the Consent Agreement.

7. The SEP consists of purchasing "bunker gear," or the personal protective equipment worn by first responders during an oil spill emergency which will be available for responders in the Colorado River Fire Rescue Authority that includes the Rifle Fire Protection District and the Burning Mountain Fire Protection District. By making available emergency oil response gear to local responders, this SEP advances the objective of OPA by minimizing the impact of oil and hazardous substances spills into the Colorado River and Beaver Creek Watersheds. The SEP also will reduce the adverse impact to public health or the environment caused by future discharges.

8. Gilco shall complete the SEP as soon as practicable but no later than January 30, 2013.

9. Gilco agrees to spend a minimum of \$16,260.00 in performing the SEP. This minimum amount was calculated in accordance with Section E of the SEP Policy, Calculation of

the Penalty. EPA used the five step process for calculating a final settlement penalty set forth in the SEP Policy. EPA assessed a mitigation credit of approximately 65 percent based on the benefit to the public and environment at large that will result from the proposed project. The SEP Policy provides that the mitigation percentage should not exceed 80 percent unless the respondent is a small business, non-profit organization, or government agency performing a project of outstanding quality. The civil penalty agreed to by Gilco in Paragraph 5 represents approximately 35 percent of the gravity component of the penalty. No economic benefit of noncompliance was calculated in this matter.

10. Consistent with the statement in Section B, Page 4 of the 1998 SEP Policy, Gilco "is not otherwise legally required to perform" the SEP proposed. The SEP cannot constitute injunctive relief because section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), does not grant the Administrator authority to order injunctive relief. Similarly, this SEP is not required by EPA's cleanup authority under section 311(c) of the Act, 33 U.S.C. § 1321(c). Lastly, the oil pollution prevention regulations do not require mitigation of future releases which is the purpose of the proposed SEP.

11. In compliance with the statement in Section C, Page 5 of the SEP Policy, the SEP is not inconsistent with any provisions of the underlying statute. The Act is part of a Congressional declaration against discharges of oil or hazardous substances into or upon the navigable waters of the United States. By providing the fire districts materials and equipment critical to respond to water-related public health and environmental emergencies, the SEP

advances the goal of the underlying statute to protect and preserve our nation's waters from oil and hazardous substance pollution.

12. Gilco certifies that, as of the date of this Consent Agreement, it is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Gilco required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements. Gilco further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

13. Gilco certifies that it is not a party to a federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Gilco further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible.) For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federally financial assistance whose performance period has not yet expired.

14. Any public statement, oral or written, made by Gilco making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the EPA for violations of the Oil Pollution Act."

15. SEP Reports

- a. Gilco shall submit a SEP Completion Report to EPA within thirty (30) days following completion of the final SEP. The SEP Completion Report shall contain the following information:
 - (i) A detailed description of the SEP as implemented;
 - (ii) A description of any problems encountered and the solutions thereto;
 - (iii) Itemized costs, documented by copies of purchase orders and receipts or canceled checks;
 - (iv) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement.
- b. Gilco shall submit a status report within two (2) months of the Final Order unless the SEP has been completed and a SEP Completion Report already submitted. The status report will include: a progress report of the SEP implementation during the reporting period; problems encountered and solutions implemented; planned activities for the remainder of the SEP implementation period; and costs incurred during the reporting period.
- c. Gilco agrees that failure to submit the SEP Completion Report shall be deemed a violation of this Consent Agreement and Gilco shall become liable for full payment in accordance with Paragraph 17(b) below.
- d. Gilco shall submit all notices and reports required by this Consent Agreement by first class mail, fax, or e-mail to:

Donna K. Inman
U.S. EPA Region 8 (8ENF-UFO)
1595 Wynkoop Street
Denver, CO 80202-1129
E-mail: inman.donnak@epa.gov
Fax: (303) 312-6953

16. Gilco agrees that EPA may inspect the personal protective gear at any time in order to confirm that the implementation, completion, or use of the SEP conforms with the representations made herein.

17. EPA acceptance of SEP Completion Report.

- a. Following receipt of the SEP Completion Report described in paragraph

no. 15(a) above, EPA will do one of the following: (i) accept the SEP Completion Report; (ii) reject the SEP Completion Report, notify Gilco, in writing, of deficiencies in the SEP Completion Report and grant Gilco an additional thirty (30) days in which to correct any deficiencies; or (iii) reject the SEP Completion Report and demand full payment in accordance with Paragraph 17(b) below.

- b. If EPA elects to exercise option (ii) above, EPA shall permit Gilco the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Gilco shall have an additional thirty (30) days to reach agreement from the receipt by the EPA of the notification of objection. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Gilco, which shall be final and binding upon Gilco. Gilco agrees to comply with any requirements imposed by EPA as a result of any such deficiency or failure to comply with the terms of this Consent Agreement. In the event that the SEP is not completed as contemplated herein, as determined by EPA, EPA may demand in writing the full cost of the SEP in the amount of \$16,260 as a civil penalty in accordance with Paragraph 5, subject to invocation of the dispute resolution procedures described herein, or a claim of force majeure.

GENERAL PROVISIONS

18. Nothing in this Consent Agreement shall relieve Gilco of the duty to comply with the Act and its implementing regulations.

19. Failure by Gilco to comply with any of the terms of the Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of the Consent Agreement and for such other relief as may be appropriate in federal district court.

20. Nothing in the Consent Agreement shall be construed as a waiver by the 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 Gilco's failure to perform pursuant to the terms of the Consent Agreement.

21. The undersigned representative of Gilco certifies that he/she is fully authorized to enter into and bind Gilco to the terms and conditions of this Consent Agreement.

22. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

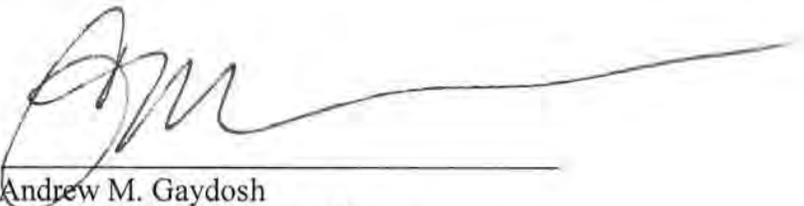
23. Each party shall bear its own costs and attorney fees in connection with this matter.

24. The Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

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

Date: January 8, 2013

By:



Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

GILCO TRANSPORTATION, INC.,
Respondent.

Date: 12-18-12

By: 



Davis Graham & Stubbs LLP

October 18, 2012

Via Hand-Delivery and Electronic Mail

Ms. Brenda Morris
OPA/SPCC Enforcement Program
USEPA Region (8 ENF-L)
1595 Wynkoop Street
Denver, Colorado 80202-1129

**Re: Gilco Transportation, Inc.:
Colorado River Fire Rescue Authority Emergency Response Supplemental
Environmental Project (Rifle, Colorado)**

Dear Ms. Morris,

On behalf of our client, Gilco Transportation, Inc. ("GTI"), we are pleased to submit this proposal for a Supplemental Environmental Project ("SEP") to the U. S. Environmental Protection Agency ("EPA") in accordance with EPA's "Supplemental Environmental Projects Policy" (Apr. 10, 1998). We greatly appreciate the time that you and Ms. Donna Inman have spent discussing SEP possibilities with us.

I. General Information

As you know, this proposal seeks to mitigate penalties levied against GTI for an alleged violation of § 311(b)(3) of the Clean Water Act related to the accidental release on August 27, 2011 of red-dyed diesel fuel onto Highway 6, that fuel allegedly reaching Clear Creek, a tributary of the South Platte River. EPA's proposed penalty for the alleged violation is \$25,284.

The proposed SEP, entitled "Colorado River Fire Rescue Authority Emergency Response Supplemental Environmental Project," seeks to assist and enable the newly-formed Colorado River Fire Rescue Authority (the "Authority") to effectively serve as a first responder to future emergencies, including accidental releases of pollutants to navigable waterways, adjoining shorelines, and/or tributaries, in and around the Rifle, Colorado area. The Authority currently is comprised of and serves two separate fire protection districts, the Rifle Fire Protection District and the Burning Mountains Fire Protection District.

The remainder of this letter presents details of GTI's proposed SEP.

Laura Riese • 303 892 7454 • laura.riese@dgsllaw.com

II. Project Description

As described in greater detail below, GTI proposes to provide \$16,260.48 (without tax) worth of supplies and services to the Authority so that the Authority can quickly and effectively serve its role as first responder in any emergency response situation occurring in its jurisdiction. This includes the town of Rifle, Colorado and the surrounding area located within the Colorado River and Beaver Creek Watersheds. The Rifle Fire Protection District, now part of the Authority, is staffed by a combination of full-time, part-time, and volunteer employees who are responsible for all fire and emergency medical service, or EMS, responses in a steadily-growing, rural area that serves 24,000 people and encompasses 411 square miles.

When responding to emergency situations that may arise, it is imperative that those in the role of first responders are well-equipped to handle any emergency. Particularly with respect to emergencies involving the discharge or release of hazardous or toxic substances, responders require safety gear for use when dealing with exposure to such substances; vehicles that will permit the responders to arrive quickly and safely on-scene; and devices to communicate between responding parties on- and off-site.

However, not all first responders have the resources to procure new, sometimes state-of-the-art, supplies or services. Many first responders, including the Authority and its members in Rifle, Colorado, rely on volunteer or part-time employees. In these situations, supplies must often be shared with others. With that in mind, GTI has contacted the Rifle Fire Protection District to discern its most crucial needs, particularly in light of the formation of the Authority. To that end, GTI and Deputy Chief Chad Harris (currently assigned to the Rifle Fire Protection District) have collaborated to identify the Authority's most pressing supply needs. Chief Harris has indicated that the Authority is in need of "bunker gear," or the personal protective equipment that first responders wear when arriving on-scene. "Bunker gear" (also known as "turnout gear") may refer to trousers, boots, jackets, coveralls, or any combination thereof. At present, the Authority is in need of jackets and pants specifically. Therefore, and using the Authority's preferred supplier, Municipal Emergency Services, Inc. – Rocky Mountains, GTI proposes to purchase and donate eight sets of the following to the Authority within 60 days of EPA's approval of the proposed SEP:

- 1) Honeywell Structural Coats, retailing at \$1,222.92 each; and
- 2) Honeywell Structural Pants, retailing at \$809.64 each.

The total cost of eight coat and pant "bunker gear" sets is \$16,260.48 (without tax). GTI will submit invoices from Municipal Emergency Services, Inc. – Rocky Mountains to EPA.

III. Nexus Requirements

GTI understands that all SEP projects must have an adequate nexus between the alleged violation and the proposed project and further understands that EPA will consider Rifle, Colorado as the area that will be primarily benefitted by the proposed SEP. This nexus derives from the fact that

Ms. Brenda Morris
October 18, 2012
Page 3

GTI is headquartered in Rifle and, having been in Rifle for twelve years, has become a well-known member of Rifle's business community.

The proposed SEP illustrates an adequate nexus with the alleged violation of the Clean Water Act related to discharge of oil into navigable waters because, regardless of geographic location, the fire department is a first responder to spill events. As a first responder, the fire department plays a key role in preventing the migration of pollutants to navigable waters, tributaries, and shorelines. In fact, fire department representatives were the first on-scene at the time of the alleged violation and were integral in initial collection/removal of spill materials. This activity promoted the swift restoration of affected riparian habitat by removing foreign material that could potentially degrade the quality of the water and adjacent forested areas. GTI's proposed donations to the Authority will assist its members to respond in kind to spill events of any sort (*e.g.*, with different pollutants in different media) that might occur in the future. Because the fire department's response activities require appropriate equipment, the provision of this equipment via the proposed SEP will directly benefit navigable waters in the Rifle area.

IV. Environmental and Public Health Benefits

Provision of supplies and services to the Authority will benefit the health and welfare of the 24,000 residents served by the Rifle Fire Protection District (in addition to other populations who will be covered by the Authority's jurisdiction, *i.e.*, Silt's population of 2,930 and New Castle's population of 4,500) because first responders will be able to complete their tasks in a safe, effective manner. Time will be saved to the extent that resources will not need to be shared between volunteer, part-time, and full-time employees, thus allowing quicker responses in times of emergency. This increased response time will be particularly important in cases where mobilization is required for protection of the natural environment, *e.g.*, for releases or discharges impacting the Colorado River or Beaver Creek Watersheds. Safety of those responding will also be promoted because new, more durable supplies can replace older, worn-out counterparts. Thus, the proposed SEP will play a role in securing significant environmental and public health protection and improvements.

Thank you for your consideration of GTI's proposed Colorado River Fire Rescue Authority Emergency Response Supplemental Environmental Project. If you have any additional questions, please do not hesitate to contact me at the telephone number or e-mail address listed above. We look forward to working with you to implement this important project.

Sincerely,



Laura Riese
for
DAVIS GRAHAM & STUBBS LLP

cc: Ms. Donna K. Inman, U.S. EPA Region 8 (*via electronic mail*)

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached, **CONSENT AGREEMENT/FINAL ORDER** in the matter of **GILCO TRANSPORTATION, INC.; DOCKET NO.: CWA-08-2013-0001** was filed with the Regional Hearing Clerk on January 8, 2013.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to Brenda L. Morris, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested and e-mailed on January 8, 2013.

Laura J. Riese, #18935
Nichole M. Abbott #34897
Davis, Graham & Stubbs, LLP,
1550 17th Street, Suite 500
Denver, CO 80202
Laure.riese@dgsllaw.com

E-mailed to:

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

January 8, 2013


Tina Artemis
Paralegal/Regional Hearing Clerk