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EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

| | | |
|------------------------|---|------------------------------|
| In the Matter of: |) | |
| |) | DOCKET NO.: CWA-10-2014-0104 |
| KELLER TRANSPORT, INC. |) | |
| Billings, Montana |) | CONSENT AGREEMENT AND |
| |) | FINAL ORDER |
| |) | |
| |) | |
| |) | |
| Respondent. |) | |

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 311(b)(6) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1321(b)(6). The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. Pursuant to Section 311(b)(6) of Act, 33 U.S.C. § 1321(b)(6), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Keller Transport, Inc. (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a Class I penalty is proposed to be assessed pursuant to Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”).

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CWA together with the specific provisions of the CWA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Respondent is a corporation organized under the laws of the State of Montana and is a “person” within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7).

3.2. 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 a tanker truck (“Facility”) the driver of which failed to negotiate a corner on U.S. Highway 12 in the State of Idaho at Mile Post 136.5, causing the tanker truck to run off the road and collide with a rock face that punctured the truck’s tanks, resulting in a spill of diesel from those tanks.

3.3. The Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

3.4. The collision occurred on September 29, 2010.

3.5. The site of the collision is on the shoreline of the Lochsa River.

3.6. Approximately 180 barrels of diesel in the Facility's tanks spilled to the shoreline and entered the waters of the Lochsa River.

3.7. The Lochsa River is designated a Wild and Scenic River and the entire Lochsa River drainage is designated critical habitat for Bull Trout. The U.S. Fish and Wildlife Service lists Idaho County as habitat for the Threatened Canada Lynx, Threatened MacFarlane's Four-O'Clock, Threatened Spalding's Catchfly, Candidate Whitebark Pine, Candidate North American Wolverine, and Candidate Yellow-billed Cuckoo. This area is a sensitive ecosystem and a drinking water supply. The Lochsa River is a "navigable water" within the meaning of Sections 311(b)(3) and 502(7) of the Act, 33 U.S.C. §§ 1321(b)(3) and 1362(7).

3.8. The September 29, 2010 spill caused a sheen to appear on the Lochsa River.

3.9. Respondent's September 29, 2010 discharge of oil from the Facility into or upon navigable waters of the United States and adjoining shorelines in a quantity that may be harmful, as determined by 40 C.F.R. § 110.3, violated Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4.3. As required by Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), EPA has taken into account the seriousness of the alleged violations; Respondent's economic benefit of

noncompliance; 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 violator to minimize or mitigate the effects of the discharge; the economic impact of the penalty on the violator; and any other matters as justice may require. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$20,000, to be made in three installments, as required by Paragraph 4.5.

4.4. EPA's willingness to settle this case for \$20,000 paid in three installments is based on the financial information Respondent has provided to EPA. The signatory for Respondent declares that the financial information provided to EPA accurately reflects Respondent's current financial condition.

4.5. Respondent consents to the issuance of the Final Order contained in Part V of this CAFO and to payment of the penalty cited in Paragraph 4.3 as follows: 1) Respondent shall pay \$7,000 of the \$20,000 penalty within 30 days of the effective date of the Final Order; 2) Respondent shall pay \$6,500 by December 31, 2014; and 3) Respondent shall pay the remaining balance of \$6,500 by June 30, 2015.

4.6. Each payment under this CAFO must be made by a cashier's check or certified check payable to the order of "Treasurer, United States of America" and bearing the notation "OSLTF-311." Payment sent by the U.S. Postal Service shall be addressed to:

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

Respondent must note on the check the title and docket number of this action.

4.7. Respondent must serve photocopies of the checks described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Derek Schruhl
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-133
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.8. If Respondent fails to pay each penalty installment assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

a. Interest. Pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid by the due date for each installment as required by Paragraph 4.5.

b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such

nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.9. The penalty described in Paragraph 4.4, including any additional costs incurred under Paragraph 4.7 above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Part III above.

4.12. Except as described in Subparagraph 4.7.2, above, each party shall bear its own costs in bringing or defending this action.

4.13. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.14. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

June 11, 2014

FOR RESPONDENT:

Debra M. Will

DEBRA WILL, Secretary
Keller Transport, Inc.

DATED:

6/27/2014

FOR COMPLAINANT:

Edward J. Kowalski

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

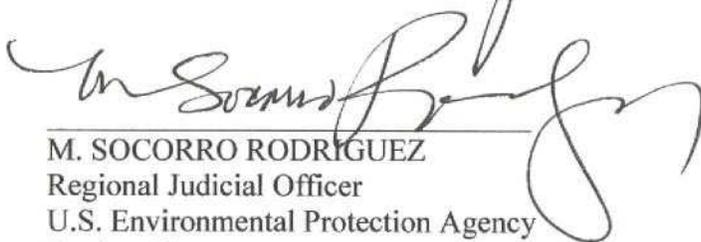
V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 30th day of June, 2014.



M. SOCORRO RODRIGUEZ
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Keller Transport, Inc., DOCKET NO.: CWA-10-2014-0104**, was served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Stephanie Mairs
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Jenny Jourdonnais
Counsel for Keller Transport, Inc.
Garlington Lohn Robinson
350 Ryman Street
Missoula, MT 59807-7909

DATED this 30th day of June, 2014.


Signature

Candace Smith
Regional Hearing Clerk
EPA Region 10