

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX



IN THE MATTER OF)
)
Pilot Thomas Logistics, LLC) CWA SECTION 311
) CLASS I ADMINISTRATIVE PENALTY
) CONSENT AGREEMENT
) AND FINAL ORDER PURSUANT TO
2950 Hyde Street,) 40 C.F.R. §§ 22.13(b) and 22.18
San Francisco, CA 94109)
)
Respondent.) Docket No. CWA-09-2023-0080

CONSENT AGREEMENT

A. Preliminary Statement

1. This Consent Agreement and Final Order (“CA/FO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 311(b)(6)(A) and (B)(i) of the Clean Water Act (“Act”), 33 U.S.C. § 1321(b)(6)(A), and (B)(i), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. § 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region IX, pursuant to Delegation 2-52 1200 TN 350 (January 18, 2017), who has in turn delegated them to the Director of the Enforcement Division (now the “Enforcement and Compliance Assurance Division”) (“Complainant”), pursuant to Delegation R9-2-52A (March 8, 2017).
2. Complainant initiates this proceeding against Pilot Thomas Logistics, LLC, including its predecessor Maxum Petroleum, Inc. and its affiliate General Petroleum, LLC, collectively (“Respondent”) for an alleged violation of Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), and its implementing regulations, at Respondent’s facility located at 2950 Hyde Street, San Francisco, California, 94109 (the “Facility”). Complainant and Respondent are hereinafter collectively referred to as the “Parties.”
3. This CA/FO simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. § 22.13(b).
4. The Parties agree that settlement of this matter is consistent with the Act’s objectives, in the public interest, and the most appropriate means of resolving this matter.

B. Statutory and Regulatory Framework

5. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits “[t]he discharge of oil or hazardous substances into or upon the navigable waters of the United States [and] adjoining shorelines . . . in such quantities as may be harmful....”
6. “Discharge” is defined in Section 311(a)(2) of the Act, 33 U.S.C. §1321(a)(2), to include, in pertinent part “any spilling, leaking, pumping, pouring, emitting, emptying, or dumping....”
7. “Oil” is defined in Section 311(a)(1) of the Act, 33 U.S.C. §1321(a)(1), to include in pertinent part, “oil of any kind or in any form, including, but not limited to, petroleum, fuel, oil, sludge....”
8. “Navigable waters” are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.
9. In accordance with Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), the President, through a delegation to EPA, has determined, by regulation, the quantities of oil that may be harmful to the public health or welfare or the environment of the United States. Executive Order No. 11735, 38 Fed. Reg. 21243 (August 3, 1973). Discharges of oil in such quantities as may be harmful include discharges of oil that “[c]ause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.” 40 C.F.R. § 110.3. *See also* Executive Order 12777, 56 Fed. Reg. 54757 (October 22, 1991).
10. Pursuant to Section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A), an owner, operator, or person in charge of any vessel, onshore facility, or offshore 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 a class I or class II civil penalty.
11. “Owner or operator” is defined in Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), in pertinent part, as “in the case of an onshore facility . . . any person owning or operating such onshore facility. . . .”
12. According to Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7), “person” includes an individual, firm, corporation, association, and a partnership.
13. “Onshore facility” is defined in Section 311(a)(19) of the Act, 33 U.S.C. § 1321(a)(10), as “any facility (including, but not limited to, motor vehicles and rolling

*In the Matter of Pilot Thomas Logistics,
LLC, San Francisco, California*

stock) of any kind located in, on, or under, any land within the United States other than submerged land.”

C. General Allegations

14. Pilot Thomas LLC is a corporation registered to conduct business in California. Respondent is a “person” within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.
15. Respondent is the “owner or operator” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of the Facility, which engages in bulk storage and distribution of oil and oil products.
16. The Facility consists of a marine fueling dock located on the Hyde Street Harbor in San Francisco, California. The Facility formerly dispensed red-dye (i.e., renewable) diesel to marine vessels and is connected by a short pipeline to two 20,000-gallon aboveground storage tanks that store the red-dye diesel. The Facility operated both the fueling dock and the pipeline.
17. The Facility is “non-transportation-related” within the meaning of 40 C.F.R. § 112.2.
18. The Facility is 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.
19. Red-dye diesel is “oil” within the meaning of Section 311(a)(1) of the Act, 33 U.S.C. §1321(a)(1)
20. The Hyde Street Harbor is within the definition of navigable waters of the United States and adjoining shorelines for the purpose of the Section 311 of CWA, 33 U.S.C. § 1321.
21. On August 6, 2020, the United States Coast Guard (“USCG”) received an incident notification (USCG Incident Number #20-165) of multiple sheens coming from the Hyde Street Harbor.
22. On September 14, 2020, EPA issued an order pursuant to Section 311(c) of CWA (EPA Docket No.: CWA-311-09-2020-0003) to the Port of San Francisco (the “Port”), which owns and operates the Hyde Street Harbor in trust for the State of California. The Order directed the Port to take all necessary steps to identify sources of the discharge of oil and to remove the discharge or threat of discharge of oil into the Hyde Street Harbor.
23. In February 2021, the Port’s investigation at the Hyde Street Harbor indicated that a significant release of red-dye diesel had occurred in the proximity of the Facility and the

*In the Matter of Pilot Thomas Logistics,
LLC, San Francisco, California*
associated diesel pipeline.

24. On March 1, 2021, EPA issued an order pursuant to Section 311(c) of CWA (EPA Docket No.: CWA-311-09-2021-0001) to Maxum Petroleum, Inc. ("Maxum") to take all necessary steps to identify sources of the discharge of oil and to remove the discharge or threat of discharge of oil into the Hyde Street Harbor. This order was amended on May 4, 2021, to add Respondent as a responsible party in light of Maxum's merger into Respondent before the issuance of the March 1, 2021 order.
25. In March 2021, Respondent's investigation at the Hyde Street Harbor identified a leak in the diesel pipeline associated with the marine fueling dock at the Facility. Upon this discovery, Respondent shut down the Facility operations pending additional investigation. The Facility has remained out of operation since that shutdown.

D. Alleged Violation

26. Paragraphs 1 through 25, above, are incorporated herein by this reference as if they were set forth here in their entirety.
27. From about August 2020 through March 2021, Respondent's marine fueling dock and associated pipeline at the Facility discharged oil in such quantities as "may be harmful," as defined in 40 C.F.R. § 110.3(b), into or upon the navigable waters of the United States and adjoining shorelines in violation of Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

E. Civil Penalty

28. Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), authorizes the administrative assessment of civil penalties in an amount not to exceed \$10,000 per violation per day for each day during which the violation continues, up to a maximum penalty of \$25,000. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, Adjustment of Civil Penalties for Inflation, the administrative assessment of civil penalties may not exceed \$22,324 per day for each day during which the violation continues, up to a maximum Class I civil penalty of \$55,808. *See also* Civil Monetary Penalty Inflation Adjustment, 88 Fed. Reg. 986 (January 6, 2023).
29. Respondent consents to the assessment of and agrees to pay a civil penalty of TWENTY THOUSAND TWENTY-SEVEN DOLLARS (\$20,027) as the civil penalty for the violation alleged in this CA/FO. The penalty was calculated based on the nature, circumstances, extent and gravity of the alleged violations, Respondent's ability to pay, its prior history of violations, its degree of culpability, and any economic benefit or savings accruing to Respondent as a result of the violation.

F. Parties Bound

30. This CA/FO shall apply to and be binding upon Respondent, and its successors and assigns, until such time as the civil penalty required under Section E has been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full and complete settlement of the violations alleged herein.
31. No change in ownership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
32. Until termination of this CA/FO, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer.
33. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into and execute this CA/FO, and to legally bind Respondent to it.
34. Respondent certifies by signing this CA/FO that, to the best of its knowledge, as of the Effective Date of this CA/FO, it is in compliance with the requirements of Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b), at the Facility.

G. Payment of Civil Penalty

35. Respondent shall submit payment of the TWENTY THOUSAND TWENTY-SEVEN DOLLARS (\$20,027) within thirty (30) days of the Effective Date as specified in Paragraphs 36 and 37 of this CA/FO.
36. All payments shall indicate the name of the Facility, Respondent's name and address and the EPA docket number of this action. Payment shall be made by corporate, certified or cashier's check payable to "United States Environmental Protection Agency" and sent as follows:

Regular Mail:

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

*In the Matter of Pilot Thomas Logistics,
LLC, San Francisco, California*

Overnight Mail:

U.S. Environmental Protection Agency
Government Lock Box 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Alternatively, payment may be made by electronic transfer as provided below:

Wire Transfers:

Wire transfers must be sent to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary = US Environmental Protection Agency

ACH (also known as REX or remittance express):

ACH payments to EPA can be made through the US Treasury using the following information:

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

Physical Location of US Treasury Facility
5700 Rivertech Court
Riverdale, MD 201737

Remittance Express (REX): 1-866-234-5681

On-Line Payment:

This payment option can be accessed from the information below:

*In the Matter of Pilot Thomas Logistics,
LLC, San Francisco, California*

www.pay.gov
Enter "sfol.1" in the search field
Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact Craig Steffen at 513-487-2091 or steffen.craig@epa.gov.

37. **Notification.** Within thirty (30) days after the due date of the payment, a copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent via electronic mail with a transmittal letter, indicating Respondent's name, the case title, and docket number, to each of the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency Region 9
R9HearingClerk@epa.gov

and to:

Peter Reich
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 9
reich.peter@epa.gov

38. If payment is not received by the due date, interest on any overdue amount will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 C.F.R. § 13.11. In addition, a six percent (6%) per annum penalty will be applied on any principal amount not paid within ninety (90) days of the due date. Payment of any interest shall be made in accordance with Paragraphs 36 and 37 above.
39. Respondent's failure to make the payment in full within the time provided in Paragraph 35 may subject Respondent to a civil action to collect the assessed penalties, plus interest, attorneys' fees, costs and additional quarterly nonpayment penalties pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review.
40. The civil penalty and any interest, late handling fees, or late penalty payments provided for in the CA/FO shall not be deducted from Respondent's or any other person or entity's federal, state, or local taxes.

H. Admissions and Waivers of Rights

41. EPA has jurisdiction over the subject matter of this action. The Consent Agreement contains the elements of a complaint required by 40 C.F.R. § 22.14(a)(1)-(3) and (8).
42. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CA/FO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the CA/FO; (iii) consents to any and all conditions specified in this CA/FO and to the assessment of the civil administrative penalty under Section E of this CA/FO; (iv) waives, for the purpose of this proceeding in Docket No. CWA-09-2023-00_, any right to contest the allegations contained in Section C of the CA/FO; and (v) waives the right to appeal the proposed final order contained in this CA/FO.

I. Reservation of Rights

43. Except as addressed in this CA/FO, EPA expressly reserves all rights and defenses that it may have.
44. Except as addressed by this CA/FO, EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, including any right EPA may have to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including, without limitation, the assessment of penalties under Section 311(b) of the CWA, 33 U.S.C. § 1321(b). This CA/FO shall not be construed as a covenant not to sue, a release, waiver, or limitation of any rights, remedies, powers, or authorities, civil or criminal, which EPA has under the Act, or any other statutory, regulatory, or common law enforcement authority of the United States, except as otherwise set forth in this CA/FO.
45. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with any applicable local, state, or federal laws and regulations.
46. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking, nor limit or otherwise preclude Respondent from asserting rights and defenses, in additional enforcement actions should EPA determine that such actions are warranted except as they relate to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section D of this CA/FO. Full payment of the penalty proposed herein shall resolve Respondent's liability for federal civil penalties for the violations and facts alleged in this CA/FO.

*In the Matter of Pilot Thomas Logistics,
LLC, San Francisco, California*

47. Except in an action to enforce this CA/FO, Respondent expressly reserves all rights to assert that neither this CA/FO nor anything in this CA/FO shall be admissible in any proceeding as evidence of an admission by, or to prove the liability of Respondent for the allegations stated in this CA/FO.
48. Other than the notices required under paragraph 37 of this CA/FO, all notices and requests under this CA/FO shall be given by email to the addresses below with a return email acknowledgment.

If to Pilot Thomas Logistics, LLC:

Peter Garchie, Esq.
Lewis Brisbois Bisgaard & Smith LLP
Peter.Garchie@lewisbrisbois.com

If to the United States Environment Protection Agency:

David H. Kim, Esq.
Office of Regional Counsel
United States Environmental Protection Agency, Region 9
Kim.David@epa.gov

J. Miscellaneous

49. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
50. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
51. The CA/FO may be executed and transmitted by facsimile, email or other electronic means, and in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument. If any portion of this CA/FO is determined to be unenforceable by a competent court or tribunal, it is the Parties' intent that the remaining portions shall remain in full force and effect
52. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.
53. EPA and Respondent consent to entry of this CA/FO without further notice.

*In the Matter of Pilot Thomas Logistics,
LLC, San Francisco, California*

K. Effective Date

54. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.13(b), this CA/FO shall take effect on the date the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk (“Effective Date”).

IT IS SO AGREED.

FOR RESPONDENT PILOT THOMAS LOGISTICS, LLC:



FOR COMPLAINANT U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 9:

**AMY MILLER-
BOWEN**

Digitally signed by AMY MILLER-
BOWEN
Date: 2023.09.14 18:17:38 -07'00'

Amy C. Miller-Bowen, Director
Enforcement and Compliance Assurance Division

*In the Matter of Pilot Thomas Logistics,
LLC, San Francisco, California*

FINAL ORDER

It Is Hereby Ordered that this Consent Agreement and Final Order in the matter of Pilot Thomas Logistics, LLC (EPA Docket No. CWA-09-2023-0080) be entered and that Respondent shall pay a civil penalty in the amount of TWENTY THOUSAND TWENTY-SEVEN DOLLARS (\$20,027) in accordance with the terms of this Consent Agreement and Final Order.

**BEATRICE
WONG**

Digitally signed by
BEATRICE WONG
Date: 2023.09.15 13:29:13
-07'00'

Beatrice Wong Date
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

This is to certify that the original of the fully executed Consent Agreement and Final Order in the matter of Pilot Thomas Logistics, LLC (CWA-09-2023-0080) was filed with the Regional Hearing Clerk and that a true and correct copy of the same was sent to the following parties by electronic mail at:

RESPONDENT:

Shalene McDonald
Pilot Thomas Logistics, LLC
1051 Mustang Drive, Suite 600
Grapevine, TX 76051
Shalene.McDonald@pilotthomas.com

James Geocaris
Lewis Brisbois Bisgaard & Smith LLP
650 Town Center Drive, Suite 1400
Costa Mesa, CA 92626
James.Geocaris@lewisbrisbois.com

COMPLAINANT:

David Kim
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
kim.david@epa.gov

Peter Reich
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Reich.peter@epa.gov

PONLY TU

Digitally signed by
PONLY TU
Date: 2023.09.15
13:51:19 -07'00'

Ponly J. Tu
Regional Hearing Clerk
U.S. EPA – Region IX

Date