

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CHILL TRANSPORTATION LLC,

Toppenish, Washington,

Respondent.

DOCKET NO. CWA-10-2024-0012

**CONSENT AGREEMENT**Proceedings Under Section 311(b)(6) of the  
Clean Water Act, 33 U.S.C. § 1321(b)(6)**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Clean Water Act (CWA) Section 311(b)(6), 33 U.S.C. § 1321(b)(6).

1.2. Pursuant to CWA Section 311(b)(6)(A), 33 U.S.C. § 1321(b)(6)(A), EPA is authorized to assess a civil penalty against any owner, operator, or person in charge of an onshore facility from which oil or a hazardous substance is discharged in violation of CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3).

1.3. CWA Section 311(b)(6)(B), 33 U.S.C. § 1321(b)(6)(B), authorizes the administrative assessment of Class I civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to amendments to the Federal Civil Penalty Inflation Adjustment Act, 28 U.S.C. § 2461, and 40 C.F.R. Part 19, the administrative assessment of Class I civil penalties may not exceed \$22,324 per day for each day during which the violation continues, up to a maximum penalty of \$279,036. *See also* 88 Fed. Reg. 986 (January 6, 2023) (2023 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Section 311(b)(6)(A) and (b)(6)(B), 33 U.S.C. § 1321(b)(6)(A) and (B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Chill Transportation LLC (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement.

## **II. PRELIMINARY STATEMENT**

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

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

2.3. Part III of this Consent Agreement 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**

### **Statutory and Regulatory Framework**

3.1. 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).

3.2. CWA Section 301 Discharge. The CWA prohibits the discharge of any pollutant, including oil, by any person, except, *inter alia*, in compliance with a National Pollutant

Discharge Elimination System (“NPDES”) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342. 33 U.S.C. § 1311(a).

3.3. “Discharge of a pollutant” means any addition of any pollutant to navigable waters from any point source. 33 U.S.C. § 1362(12).

3.4. “Pollutant” is defined to include “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).

3.5. A “person” is an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body. 33 U.S.C. § 1362(5).

3.6. CWA Section 502(7) defines “navigable waters” as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

3.7. A “point source” is any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. 33 U.S.C. § 1362(14).

3.8. CWA Section 311 Discharge. The CWA further prohibits the discharge of oil into or upon the navigable waters of the United States and adjoining shorelines in such quantities as the President determines may be harmful to the public health or welfare or the environment of the United States. 33 U.S.C. § 1321(b)(3).

3.9. The CWA defines “discharge” to include “any spilling, leaking, pumping, pouring, emitting, emptying or dumping . . . .” 33 U.S.C. § 1321(a)(2).

3.10. “Oil” means “oil of any kind or in any form.” 33 U.S.C. § 1321(a).

3.11. CWA Section 502(7) defines “navigable waters” as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

3.12. Pursuant to 33 U.S.C. § 1321(b)(4), EPA has determined by regulation that the quantities of oil that may be harmful to the public health or welfare or the environment of the United States include discharges of oil that (1) violate applicable water quality standards; (2) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines; or (3) cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. 40 C.F.R. § 110.3.

3.13. An “onshore facility” is any facility (including, but not limited to, motor vehicles and rolling stock) of any kind in, on, or under any land within the United States other than submerged land. 33 U.S.C. § 1321(a).

### **General Allegations**

3.14. Respondent is a “person” under CWA Sections 311(a)(7) and 502(5), 33 U.S.C. §§ 1321(a)(7), 1362(5).

3.15. On August 8, 2021, a semi-truck and refrigerated trailer (“Truck”) crashed and overturned on Washington State Route 97 near Milepost 57 within the external boundaries of the Yakama Indian Reservation, into and near Toppenish Creek and adjacent wetlands within the Toppenish National Wildlife Refuge.

3.16. At all times relevant to this Consent Agreement, Respondent was the “owner or operator” of the Truck within the meaning of CWA Section 311(a)(6), 33 U.S.C. § 1321(a)(6).

3.17. The Truck released motor oil and diesel fuel from the Truck fuel tanks into Toppenish Creek, to wetlands adjacent to Toppenish Creek, and to the shoreline of Toppenish Creek.

3.18. The spill response team observed and documented a sheen on the surface of the Toppenish Creek.

3.19. Shortly after the crash, responders from the Confederated Tribes and Bands of the Yakama Nation and the Washington State Department of Ecology initiated spill response and cleanup activities, including placement of boom, soil excavation, pumping using vacuum trucks, and water quality monitoring.

3.20. Toppenish Creek is a relatively permanent tributary of the Yakima River, which flows to the Columbia River. Thus, Toppenish Creek and its adjacent wetlands are “navigable waters” as defined under CWA Section 502(7), 33 U.S.C. § 1362(7).

3.21. Respondent failed to notify the National Response Center of the discharge, as required by CWA Section 311(b)(5), 33 U.S.C. § 1321(b)(5), and 40 C.F.R. § 110.6.

3.22. In an effort to resolve alleged violations of Washington State law, Respondent and the Washington State Department of Ecology have reached an agreement which requires Respondent to pay a civil penalty of \$1,400 for the spill and Respondent’s failure to remove the spilled oil.

### **Violations**

#### Violation 1 – Unauthorized Discharge in Violation of CWA Section 301(a), 33 U.S.C. § 1311(a)

3.23. Paragraphs 3.1 through 3.22 are realleged and incorporated herein by reference.

3.24. The motor oil and diesel fuel that was released from Respondent’s Truck are “pollutants” within the meaning of CWA Section 502(6), 33 U.S.C § 1362(6).

3.25. Respondent’s Truck is a “point source” within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).

3.26. Toppenish Creek and wetlands adjacent to Toppenish Creek are waters of the United States within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

3.27. At least on August 8, 2021, Respondent added motor oil and diesel fuel from the

Truck into Toppenish Creek and into wetlands adjacent to Toppenish Creek.

3.28. Respondent's actions constitute a "discharge of pollutants" within the meaning of CWA Sections 301(a) and 502(12), 33 U.S.C. §§ 1311(a) and 1362(12).

3.29. The discharge was not authorized by a permit issued by EPA or the State of Washington pursuant to CWA Section 402, 33 U.S.C. § 1342.

3.30. Therefore, Respondent violated CWA Section 301(a), 33 U.S.C. § 1311(a), by adding pollutants to navigable waters from a point source without a permit.

3.31. Violations of CWA Section 301(a), 33 U.S.C. § 1311(a), are enforceable under CWA Section 309(g), 33 U.S.C. § 1319(g).

Violation 2 - Unauthorized Discharge of Oil in Violation of CWA Section 311(b)(3), 33 U.S.C.

§ 1321(b)(3)

3.32. The allegations in Paragraphs 3.1 through 3.22 are realleged and incorporated herein by reference.

3.33. At all times relevant to this Consent Agreement, Respondent's Truck was an "onshore" facility within the meaning of CWA Section 311(a)(10), 33 U.S.C. § 1321(a)(10).

3.34. At all times relevant to this Consent Agreement, Respondent was the "owner or operator" of the Truck within the meaning of CWA Section 311(a)(6), 33 U.S.C. § 1321(a)(6).

3.35. At least on August 8, 2021, Respondent discharged motor oil and diesel fuel from the Truck into Toppenish Creek, into wetlands adjacent to Toppenish Creek, and onto the shoreline of Toppenish Creek.

3.36. Respondent's actions constituted a discharge of oil into or upon navigable waters and adjoining shorelines within the meaning of CWA Sections 311(a)(2) and (b)(3), 33 U.S.C. §§ 1321(a)(2) and (b)(3).

3.37. Toppenish Creek and wetlands adjacent to Toppenish Creek are waters of the United States within the meaning of CWA Sections 311(b)(3) and 502(7), 33 U.S.C.

§§ 1321(b)(3) and 1362(7).

3.38. Motor oil and diesel fuel are “oil” within the meaning of CWA Section 311(a)(1), 33 U.S.C. § 1321(a)(1).

3.39. The discharge resulted in the presence of oil in waters of the United States and adjoining shorelines in sufficient quantities to cause a sheen, sludge, emulsion or violation of water quality standards. The discharge of oil was in a quantity that may be harmful, within the meaning of CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3.

3.40. Therefore, Respondent violated CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3), by discharging oil into navigable waters and adjoining shorelines in harmful quantities.

3.41. Violations of CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3), are enforceable under CWA Section 311(b)(6), 33 U.S.C. § 1321(b)(6).

#### **IV. TERMS OF SETTLEMENT**

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

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

4.3. As required by CWA Section 311(b)(8), 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, including Respondent’s agreement to pay a \$1,400 penalty to the Washington State Department of Ecology for violations of state law arising from the same incident, EPA has determined that an appropriate penalty to settle this action is \$2,000.

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3 and agrees to pay the total civil penalty within thirty (30) days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979078  
St. Louis, Missouri 63197-9000

Respondent must note on the check the title and Docket Number CWA-10-2024-0012 of this action.

4.6. Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 4.5, on the Regional Hearing Clerk and EPA Region 10 Compliance Officer at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10  
R10\_RHC@epa.gov

Rick Cool  
U.S. Environmental Protection Agency  
Region 10  
Cool.Richard@epa.gov

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement and the Final Order 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.

4.7.1. Interest. Pursuant to CWA Section 311(b)(6)(H), 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 provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 311(b)(6)(H), 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.

4.8. The penalty described in Paragraph 4.3, including any additional expenses incurred under Paragraph 4.7 above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that they are authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, the violation(s) alleged in Part III above have been corrected.

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

4.12. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

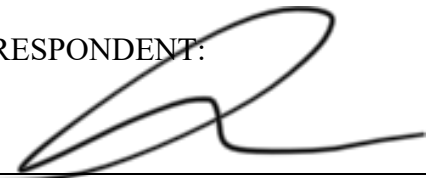
4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

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FOR RESPONDENT:



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SONIA I. SLAYDEN  
President  
Chill Transportation LLC

DATED:

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FOR COMPLAINANT:

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EDWARD J. KOWALSKI  
Director  
Enforcement and Compliance Assurance Division  
EPA Region 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CHILL TRANSPORTATION LLC,

Toppenish, Washington,

Respondent.

DOCKET NO. CWA-10-2024-0012

**FINAL ORDER**

Proceedings Under Section 311(b)(6) of the  
Clean Water Act, 33 U.S.C. § 1321(b)(6)

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.

2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act (CWA) for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order 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.

4. This Final Order shall become effective upon filing.

IT IS SO ORDERED.

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RICHARD MEDNICK  
Regional Judicial Officer  
EPA Region 10