

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

**** FILED ****
U.S. EPA - REGION IX
02 APR 2021

IN THE MATTER OF)	
)	CWA SECTION 311
)	CLASS II ADMINISTRATIVE PENALTY
Golden Valley Transfer, Inc)	CONSENT AGREEMENT
5502 S Granite Road)	AND FINAL ORDER
Bakersfield, California)	
)	Docket No. CWA-09-2021-0019
Respondent.)	
_____)	

CONSENT AGREEMENT

A. PRELIMINARY STATEMENTS

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 Sections 311(b)(6)(A) and (b)(6)(B)(ii) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1321(b)(6)(A), (b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and under the authority provided by Section 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 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 2-52A 12 TN 350 (January 18, 2017), who has in turn delegated them to the EPA Region 9 Director of the Enforcement and Compliance Assurance Division (“Complainant”), pursuant to Delegation R9-2-52A (March 8, 2017).

2. Complainant initiates this proceeding against Golden Valley Transfer, Inc. (“Respondent”) for the alleged violation of Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

Complainant and Respondent are hereinafter collectively referred to as the “Parties.”

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

C. GENERAL ALLEGATIONS

14. EPA alleges Golden Valley Transfer, Inc. is a crude oil transportation company incorporated in California with a principal place of business at 5502 S. Granite Road in Bakersfield, 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), 1362(5).

15. EPA alleges Respondent is or was 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 that was carrying crude oil on California State Route 166 in Santa Barbara County, California on March 21, 2020 when it overturned. The tanker truck was damaged and released crude oil that entered into the Cuyama River.

16. EPA alleges that the tanker truck is an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10). The crude oil that the tanker truck was transporting when it overturned was “oil” within the meaning of Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

17. EPA alleges the Cuyama River, which flows into the Santa Maria River and ultimately the Pacific Ocean, is a “navigable water of the United States,” as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

18. EPA alleges that on March 21, 2020, Respondent’s overturned tanker truck 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).

D. CIVIL PENALTY

19. Pursuant to Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), 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 is authorized, but may not exceed \$19,505 per day for each day during which the violation continues, up to a maximum administrative civil penalty of \$243,808. *See also* Civil Monetary Penalty Inflation Adjustment, 85 Fed. Reg. 83820 (Dec. 23, 2020).

20. Respondent consents to the assessment of and agrees to pay a civil penalty of EIGHTY THOUSAND DOLLARS (\$80,000) in full settlement of the federal civil penalty claims set forth in this CAFO. The penalty was calculated based on the nature, circumstances, extent, and gravity of the 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 violations.

E. PARTIES BOUND

21. This CA/FO shall apply to and be binding upon Respondent, its successors, and assigns. Changes in ownership, including but not limited to any transfer of assets or real or personal property, shall not alter Respondent's obligations under this CA/FO.

22. Respondent's signatory to this CA/FO certifies that it is fully authorized to enter into and bind Respondent to the terms of the CA/FO.

F. PAYMENT OF CIVIL PENALTIES

23. Respondent shall submit payment of the EIGHTY THOUSAND DOLLARS (\$80,000) within thirty (30) days of the Effective Date as specified in Paragraphs 24 and 25 of this CA/FO.

24. Respondent shall submit payments due under this CA/FO in accordance with one of the options set forth below, and shall reference the Respondent's name and address, and the docket number of this action.

Regular Mail:

Payment shall be made by certified or cashier's check payable to "United States Environmental Protection Agency," and sent as follows:

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

Overnight Mail:

Payment shall be made by certified or cashier's check payable to "United States Environmental Protection Agency," and sent as follows:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Wire Transfers:

Wire transfers must be sent directly 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

*Note: Foreign banks **must** use a United States Bank to send a wire transfer to the US EPA.

ACH (also known as REX or remittance express):

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 20737
Remittance Express (REX): 1-866-234-5681

On Line Payment:

Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.

This payment option can be accessed from the information below:

www.pay.gov

Enter “sfo1.1” 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.

25. 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 and the docket number for this CA/FO 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

26. If payment is not received within thirty (30) days of the Effective 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, as described in 40 C.F.R. § 13.11(c). Payment of any interest shall be made in accordance with Paragraphs 24 and 25 above.

27. Respondent’s failure to make the payment in full within thirty (30) days of the Effective Date may subject Respondent to a civil action to collect the assessed 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.

28. 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.

G. ADMISSIONS AND WAIVERS OF RIGHTS

29. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding in Docket No. CWA-09-2021-0019, Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CA/FO and over Respondent; (ii) neither admits or 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 D of this CA/FO; (iv) waives 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 in this CA/FO.

H. RESERVATION OF RIGHTS

30. This CA/FO, inclusive of all exhibits and attachments, is the entire agreement between the Parties to resolve EPA's civil penalty claims against Respondent for the specific CWA violations alleged herein. Full compliance with this CA/FO shall constitute full settlement only of Respondent's federal civil penalty liability for the CWA violations specifically alleged herein.

31. This CA/FO does not constitute a waiver, suspension, or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated

thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law.

Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's civil liability for the violations and facts alleged in this Consent Agreement.

32. This CA/FO shall in no way affect the right of EPA or the United States against any third party or the right of any third party against Respondent. This CA/FO does not create any right in or grant any cause of action to any third party.

I. MISCELLANEOUS

33. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

34. This 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 Consent Agreement is determined to be unenforceable by any competent court or tribunal, it is the Parties' intent that the remaining portions shall remain in full force and effect.

35. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

36. EPA and Respondent consent to entry of this CA/FO without further notice.

J. EFFECTIVE AND TERMINATION DATES

37. 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").

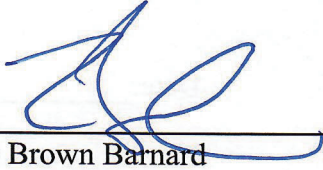
38. This CA/FO shall terminate when Respondent has fully complied with its terms.

K. PUBLIC NOTICE

39. Pursuant to Section 311(b)(6)(C)(i) of the Act, 33 U.S.C. § 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order. The petition and consent-withdrawal provisions of 40 C.F.R. § 22.45(c)(4) shall apply.

IT IS SO AGREED.

For Respondent Golden Valley Transfer, Inc.:



Zachary Brown Barnard
Vice President

Date: 1/21/2021

For Complainant U.S. Environmental Protection Agency

AMY MILLER- Digitally signed by AMY
MILLER-BOWEN
BOWEN Date: 2021.02.08
08:48:38 -08'00'

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

Date: _____

FINAL ORDER

It is hereby ordered that this Consent Agreement and Final Order (EPA Docket No. CWA-09-2021-0019) be entered and that Respondent shall pay a civil penalty in the amount of EIGHTY THOUSAND DOLLAS (\$80,000) in accordance with the terms of this Consent Agreement and Final Order.

STEVEN JAWGIEL

Digitally signed by STEVEN
JAWGIEL

Date: 2021.04.02 11:46:43 -07'00'

Steven L. Jawgiel
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

This is to certify that the fully executed Consent Agreement and Final Order in the matter of **Golden Valley Transfer, Inc. (Docket No. CWA-09-2021-0019)** was filed with the Regional Hearing Clerk and that a copy of the same was sent to the following parties as follows:

FOR RESPONDENT: Zachary Brown Barnard
Vice President
Golden Valley Transfer, Inc.
5502 S. Granite Road
Bakersfield, CA 93308
zbarnard@petroltransportinc.com

FOR COMPLAINANT: Diane Prend
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne St., ORC-3
San Francisco, CA 94105
prend.diane@epa.gov

Date

Steven Armsey
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 9