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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 10

In the Matter of:)	
)	DOCKET NO. CWA-10-2004-0001
BLUE LINE TRANSPORTATION)	
COMPANY, INC.)	CONSENT AGREEMENT AND FINAL
)	ORDER
)	
)	
Respondent.)	
_____)	

I. AUTHORITIES

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”), 33 U.S.C. § 1321(b)(6). The Administrator has delegated the authority to issue the Final Order contained in Part VI of this CAFO to the Regional Administrator of EPA, Region 10.

1.2 In accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action

Orders, and the Revocation, Termination or Suspension of Permits,” 40 C.F.R. Part 22 (“Part 22”), EPA hereby issues, and Respondent Blue Line Transportation Company, Inc.

(“Respondent”) hereby agrees to issuance of, the Final Order contained in Part VI of this CAFO.

1.3 “Navigable waters” of the United States are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

1.4 Section 311(j)(1) of the Act, 33 U.S.C. § 1321(j)(1), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore and offshore facilities, and to contain such discharges”

1.5 Under the authority of Section 311(j)(1) of the Act, 33 U.S.C. § 1321(j)(1), 40 C.F.R. Part 112, the Oil Pollution Prevention regulations establish procedures, methods, and requirements for preventing the discharge of oil. These requirements apply to owners or operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products that, due to their location, could reasonably be expected to discharge oil in harmful quantities (as defined in 40 C.F.R. Part 110) to navigable waters of the U.S. or adjoining shorelines.

1.6 Under 40 C.F.R. § 112.3, the owner or operator of an onshore facility that is subject to 40 C.F.R. Part 112 must prepare and fully implement a Spill Prevention Control and Countermeasure (“SPCC”) plan in accordance with 40 C.F.R. § 112.7.

1.7 Under 40 C.F.R. § 112.7, the SPCC plan shall be prepared in accordance with good engineering practice, including consideration of applicable industry standards, and with the

requirements of 40 C.F.R. § 112.3.

II. PRELIMINARY STATEMENT

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

2.2 A concise statement of the factual basis for alleging violations of the Act, together with specific references to the provisions of the Act and implementing regulations Respondents are alleged to have violated, appears in Part III of this CAFO.

III. ALLEGATIONS

3.1 Respondent is a corporation organized under the laws of Oregon with a place of business in Portland, Oregon.

3.2 Respondent is a “person” within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7) and 40 C.F.R. § 112.2.

3.3 Respondent is an “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 a facility used for gathering, storing, processing, transferring or distributing oil or oil products, located at or near Portland, Oregon (the “facility”).

3.4 The facility contains approximately eight above-ground storage tanks with a combined total storage capacity of 188,685 gallons of “oil” as defined at 40 C.F.R. § 112.2.

3.5 The facility is an “onshore facility,” as defined in Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2.

3.6 Respondent's facility is located approximately 200 feet south of the Columbia Slough, which are navigable waters of the U.S.

3.7 Due to its location, the facility could reasonably be expected to discharge oil in such quantities "as may be harmful" to the public health or welfare or the environment of the United States as defined in 40 C.F.R. § 110.3.

3.8 The facility is a non-transportation-related facility under 40 C.F.R. § 112.2.

3.9 The facility began operations more than six months prior to EPA's June 24, 1999 inspection.

3.10 On October 5, 2001, EPA representatives inspected the facility to determine compliance with Section 311(j) of the Act, and in particular the requirements of 40 C.F.R. Part 112 related to SPCC plans.

3.11 EPA representatives found that Respondent failed to prepare, maintain and fully implement an SPCC plan for the facility in accordance with the provisions of 40 C.F.R. § 112.7 in violation of 40 C.F.R. § 112.3; specifically, Respondent:

(a) failed to provide adequate secondary containment for the trailer tank in violation of 40 C.F.R. § 112.7 (a)(3)(iii);

(b) failed to provide security precautions in violation of 40 C.F.R. § 112.7(g)(1).

3.12 Respondent finalized an SPCC plan for the facility on February 10, 2003.

3.13 Therefore, from at least October 5, 2001 through February 10, 2003, Respondent failed to prepare, maintain and fully implement an SPCC plan for the facility in accordance with

the provisions of 40 C.F.R. § 112.7 in violation of 40 C.F.R. 112.3 Section 311(j) of the CWA.

IV. CONSENT AGREEMENT

The parties to this action hereby stipulate as follows:

- 4.1 Respondent admits the jurisdictional allegations contained in Part III of this CAFO.
- 4.2 Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.
- 4.3 Respondent expressly waives any rights to contest the allegations and to appeal the Final Order contained herein.
- 4.4 The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.
- 4.5 Except as provided in Paragraph 4.11 below, each party shall bear its own costs and attorneys fees in bringing or defending this action.
- 4.6 EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$9,178. This penalty amount has been agreed upon in consideration of the statutory penalty factors identified in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8)
- 4.7 Respondent consents to the issuance of the Final Order recited herein and to payment of the penalty cited in the foregoing paragraph within 30 days of the effective date of this Order.
- 4.8 Payment under this CAFO shall be made by cashier's check or certified check, payable to the "Oil Spill Liability Trust Fund" and shall be mailed to the following address:

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

Respondent shall note on the check the title and docket number of this case.

4.9 Respondent shall provide a photocopy of the check to the Complainant at the following address:

Office of Environmental Cleanup
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Stop ECL-116
Seattle, Washington 98101
Attn: Mary Matthews

4.10 Should Respondent fail to pay the penalty 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. Should such a failure to pay occur, Respondent may be subject to a civil action to collect the assessed penalty under the CWA. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.11 Should Respondent fail to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

- 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 the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days

of the effective date of the Final Order contained herein.

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), should Respondent fail to pay on a timely basis the amount of the penalty assessed by the Final Order contained herein, Respondent shall pay (in addition to any assessed penalty and interest, attorney fees, 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 twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.12 The penalty described above represents a civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

RESPONDENT
BLUE LINE TRANSPORTATION COMPANY
PORTLAND, OREGON



Blue Line Transportation Company, Inc.

Stipulated and Agreed this 14 day of OCTOBER 2003

COMPLAINANT
U.S. EPA REGION 10



Michael F. Gearheard, Director
Environmental Cleanup Office

Stipulated and Agreed this 23 day of October 2003:

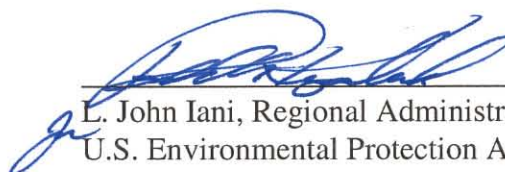
V. FINAL ORDER

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

5.2 This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the particular violations alleged in Part III, above. 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 and permits issued thereunder.

5.3 This Final Order shall become effective upon filing.

SO ORDERED this 18th day of December, 2003.



L. John Iani, Regional Administrator
U.S. Environmental Protection Agency, Region 10

CERTIFICATE OF SERVICE

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4 The undersigned certifies that the original of the attached **CONSENT AGREEMENT**
5 **AND FINAL ORDER** In the Matter of: **Blue Line Transportation Company, Inc.,**
6 **DOCKET NO. CWA-10-2004-0001**, was filed with the Regional Hearing Clerk on December
7 18, 2003.
8


9 On December 18, 2003 the undersigned certifies that a true and correct copy of the
10 document was delivered to:

11
12 Mary St. Peter
13 US Environmental Protection Agency
14 1200 Sixth Avenue, ORC-158
15 Seattle, WA 98101
16

17
18 Further, the undersigned certifies that a true and correct copy of the aforementioned
19 document was placed in the United States mail certified/return receipt on December 18, 2003, to:

20
21 Charles Tindall, President
22 Blue Line Transportation Co., Inc.
23 2606 North Newark
24 Portland, Oregon 97217
25

26
27 DATED this 18th day of December, 2003.
28

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30 
31 _____
32 Carol Kennedy
33 Regional Hearings Clerk
34 EPA Region 10
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