

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

IN THE MATTER OF

**TENNESSEE
STEEL HAULERS, INC.**
2607 Brick Church Pike
Post Office Box 78189
Nashville, TN 37207,

Respondent.

**CWA SECTION 311 CLASS I
CONSENT AGREEMENT
AND FINAL ORDER
UNDER 40 C.F.R. § 22.13(b))**

Docket No.: CWA -04-2007-5167(b)

HEARING CLERK

2007 JUL -9 PM 3:05

RECEIVED
EPA REGION IV

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(I) of the Clean Water Act ("Act"), 33 U.S.C. § 1321(b)(6)(B)(I), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 4, who has in turn delegated these authorities through the Director, RCRA Division, to the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division ("Complainant").

CONSENT AGREEMENT

Stipulations

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

1. Respondent is a corporation organized under the laws of Tennessee with a place of business located at 2607 Brick Church Pike, Nashville, TN 37207. The 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. § 110.1.

2. The Respondent is the owner within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 110.1 of a trucking facility located at 2607 Brick Church Pike. Respondent is also the owner of a truck which was located at the rest area at Exit 13 of Interstate Highway 71 in Crestwood, Kentucky (the facility) at all times relevant to this Consent Agreement.

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).

4. The South Fork of Harrods Creek is a navigable water, as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1, subject to the jurisdiction of Section 311 of the Act

5. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

6. For purposes of Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. § 110.3 to include discharges of oil that: (1) violate applicable water quality standards; or (2) cause a film or a 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 the adjoining shorelines.

7. Respondent admits the jurisdictional statements contained herein.

Allegations

Complainant alleges, and Respondent neither admits nor denies, that:

8. On February 21, 2005, Respondent discharged 100 gallons of oil (diesel fuel) as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 110.1, from its facility at the rest area at Exit #13 of Interstate Highway 71 in Crestwood, Kentucky into or upon the South Fork of Harrods Creek or its adjoining shorelines.

9. Respondent's February 21, 2005 discharge of oil caused a sheen upon or discoloration of the surface of the unnamed tributary of South Fork Harrods Creek, and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R § 110.3, in violation of Section 311(b)(3) of the Act.

Waiver of Rights

10. Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(I) of the Act, 33 U.S.C. § 1321(b)(6)(B)(I), to appeal any Final Order in this matter under Section 311(b)(6)(G)(I) of the Act, 33 U.S.C. § 1321(b)(6)(G)(I), and consents to the issuance of a Final Order without further adjudication.

11. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum

or communication is to persuade such official to accept and issue this Consent Agreement or the Final Order. **Penalty**

12. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **\$1,000**.

Payment Terms

Based on the forgoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

13. No later than 30 days after the effective date of the Final Order, the Respondent shall pay the amount of **\$1,000** by means of a cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, the Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311." If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency
P.O. Box 371099M
Pittsburgh, PA 15251

If the Respondent sends payment by a private delivery service, the payment shall be addressed to:

Mellon Client Service Center
ATTN: Shift Supervisor
Lockbox 371099M Account 9109125
500 Ross Street
Pittsburgh, PA 15262-0001

If paying by EFT, the Respondent shall transfer **\$1,000** to:

Mellon Bank
ABA 043000261
Account 9109125
22 Morrow Drive
Pittsburgh, PA 15235

In the case of an international transfer of funds, the Respondent shall use SWIFT address
MELNUS3P.

14. If paying by check, the Respondent shall note on the penalty payment check the title and docket number of this case. The Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the following people:

Patricia Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 4
SNAFC
61 Forsyth Street, SW
Atlanta, GA 30303

Doug McCurry
North Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. Environmental Protection Agency
Region 4
SNAFC
61 Forsyth Street, SW
Atlanta, GA 30303

15. Respondent's failure to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty 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 agreed to herein shall not be subject to review.

General Provisions

16. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

17. The Final Order 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 liability for federal civil penalties for the violations and facts stipulated to and alleged herein.


18. The undersigned representative of Respondent hereby certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind Respondent to this Consent Agreement.

Effective Date

19. This Consent Agreement and attached Final Order is effective upon the filing of the Final Order with the Regional Hearing Clerk.

TENNESSEE STEEL HAULERS, INC.

Date: 6/22/07


Frank Livesay, Secretary
Tennessee Steel Haulers, Inc.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 7/6/07


Narindar Kumar, Chief
RCRA & OPA Enforcement & Compliance Branch
RCRA Division

FINAL ORDER

Pursuant to Section 311(b)(6) of the Clean Water Act, 33 U.S.C. § 1321(b)(6), and the delegated authority of the undersigned, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits," codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Allegations by the Complainant are adopted as Findings in this Final Order.

The Respondent is ordered to comply with the terms of the Consent Agreement.

Date: July 9, 2007

Susan S. Schub
Susan Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Tennessee Steel Haulers, Inc., Docket Number: CWA-04-2007-5167(b) on the parties listed below in the manner indicated:

Susan Capel, Associate Regional Counsel
U.S. Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(Via EPA's internal mail)

Tennessee Steele Haulers, Inc.
c/o Mr. Larry R. Williams, PLLC
The Barristers Building
329 Union Street
Nashville, TN 190632

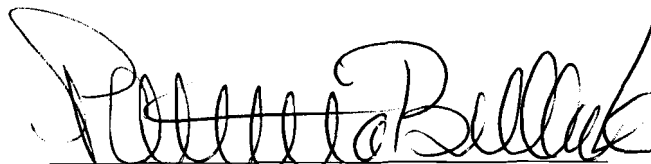
(Via Certified Mail- Return Receipt Requested)

The Honorable Susan L. Biro
Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Via Certified Mail - Return Receipt Requested)

Date

7-9-07



Patricia Bullock
Law Clerk

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Susan Capel on 7-9-2007
(Name) (Date)

in the EAD at (404) 562-9566
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Tennessee Steel Haulers, Inc
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 1,000
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA-04-2007-5167

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: RCRA & OPA Enforcement and Compliance Branch

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number is: _____ Date _____

If you have any questions, please call: Peggy Whitney of the Financial Management Section at: (404) 562-8238.

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- | | |
|--|------------------------------|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD) |
| | 3. Designated Program Office |

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |