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BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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HEARINGS CLERK  
EPA--REGION 10

In the Matter of:

BIG STATE LOGISTICS, INC. (BIRCH LAKE),  
Fairbanks, Alaska,

Respondent.

DOCKET NO. CWA-10-2017-0143

**CONSENT AGREEMENT**

**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 311(b)(6) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1321(b)(6).

1.2. Pursuant to Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and Big State Logistics, Inc. ("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 Class I penalty is proposed to be assessed pursuant to Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), to the Regional

Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, 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**

3.1 The Clean Water Act prohibits the discharge of any pollutant, including oil, by any person, except as authorized by and in compliance with other sections of the Act. 33 U.S.C. § 1311(a).

3.2 The Clean Water Act 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). The Act defines "discharge" to include "any spilling, leaking, pumping, pouring, emitting, emptying or dumping . . . ." 33 U.S.C. § 1321(a)(2). "Navigable waters" are defined as "the waters of the United States, including the territorial seas." 33 U.S.C. § 1367(7).

3.3 Waters of the United States include waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters; and all impoundments and tributaries to those waters. 40 C.F.R. § 122.2.

3.4 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.

3.5 Respondent is a corporation organized under the laws of the State of Alaska and 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.

3.6 As part of the normal course of its business, Respondent transports ultra-low sulfur diesel fuel overland. Diesel fuel is an “oil” within the meaning of Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).

#### **Incident**

3.7 Respondent is the “owner or operator” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of a double-tanker truck (“Facility”). The Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

3.8 On September 5, 2016, the Facility was hauling ultra-low sulfur diesel fuel near Milepost 306 of the Richardson Highway, approximately 55 miles from Fairbanks, Alaska, when an equipment failure in the Facility’s tongue hitch caused its secondary tanker to overturn and roll into a roadside right-of-way ditch next to the highway. The secondary tanker was punctured in multiple locations which caused its contents to spill into the roadside ditch and a nearby pond.

3.9 On September 5, 2016, the Alaska Department of Public Safety prepared an incident report attributing the cause of the spill to equipment failure. On September 6, 2016, the Alaska Department of Environmental Conservation released a situation report reiterating that account. A September 5, 2016 driver/vehicle examination report prepared by the Alaska

Department of Transportation diagnosed the equipment failure as “[d]efective coupling devices for full trailer: Draw bar cracked during transit causing rollover/crash.”

3.10 The September 5, 2016 spill constituted a “discharge” of “oil” within the meaning of Section 311(a)(1), (2), 33 U.S.C. § 1321(a)(1), (2).

3.11 The September 5, 2016 spill resulted in the discharge of approximately 3,571 gallons of ultra-low sulfur diesel fuel oil into the roadside ditch which runs parallel to the Richardson Highway, as well as the nearby pond. The discharge of oil caused a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines, and therefore constituted a harmful quantity of oil within the meaning of 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4).

3.12 The roadside ditch into which the Facility spilled is a non-navigable tributary to Birch Lake because it contributes surface flow from the south side of the Richardson Highway directly to Birch Lake.

3.13 Birch Lake is a navigable water body used for commercial navigation in the form of commercial waterborne recreation, namely fishing, boating, and jet skiing. Birch Lake is bordered by a 48-acre state park and a military recreation area that offers opportunities for lodging, picnicking, and camping.

3.14 The roadside ditch and Birch Lake are “waters of the United States,” and are subject to the jurisdiction of the CWA. 33 U.S.C. § 1362(7); 33 C.F.R. § 328.3(a); 40 C.F.R. § 230.3(s).

### Violation

3.15 Respondent's September 5, 2016 discharge of oil from the Facility into or upon waters of the United States and adjoining shorelines in a quantity that may be harmful, as determined by 40 C.F.R. § 110.3, violated Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

### IV. CONSENT AGREEMENT

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 Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), EPA has taken into account the seriousness of the alleged violation; 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, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$24,000.00.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order. 40 C.F.R. § 22.31(c).

4.5. Payment under this Consent Agreement 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 979077  
St. Louis, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check 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, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Richard Cool  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-101  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement 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 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 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 set forth in Part V 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 Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.2, Respondent shall pay (in addition to any assessed penalty and interest) attorney's 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 costs incurred under Paragraph 4.7 above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes. 26 U.S.C. § 162(f).

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to the terms and conditions of this document.

4.10. Respondent expressly waives any right to contest the allegations contained within this Consent Agreement and waives any right to appeal the Final Order.

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

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

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

DATED:

FOR RESPONDENT:

8/18/17

MERVIN GILBERTSON  
MERVIN GILBERTSON, President  
Big State Logistics, Inc.

DATED:

FOR COMPLAINANT:

8/28/2017

Edward J. Kwalski  
EDWARD J. KWALSKI, Director  
Office of Compliance and Enforcement  
EPA Region 10



BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

BIG STATE LOGISTICS, INC. (BIRCH LAKE),  
Fairbanks, Alaska,

Respondent.

DOCKET NO. CWA-10-2017-0143

**FINAL ORDER**

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.

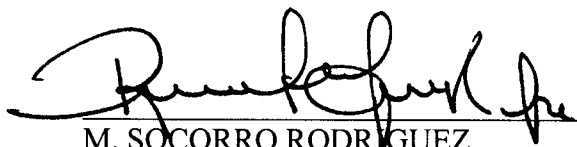
1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the 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.

1.4. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which Respondent may have with respect to any issue of fact or law set forth in this Final Order, including, but not limited to, any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

1.5. This Final Order shall become effective upon filing.

SO ORDERED this 1<sup>st</sup> day of September, 2017.



M. SOCORRO RODRIGUEZ  
Regional Judicial Officer  
EPA Region 10

**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT and FINAL ORDER** in **In the Matter of: Big State Logistics, Inc. (Birch Lake)**, **DOCKET NO.: CWA-10-2017-0143**, was filed with the Regional Hearing Clerk.

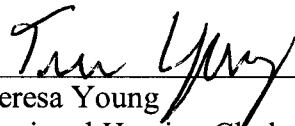
The undersigned certifies that, on the date below, a true and correct copy of the document was delivered to:

William M. McLaren  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Further, the undersigned certifies that, on the date below, a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Mervin Gilbertson  
President  
Big State Logistics, Inc.  
3621 Royal Road  
Fairbanks, Alaska 99701

DATED this 5 day of September, 2017.

  
\_\_\_\_\_  
Teresa Young  
Regional Hearing Clerk  
EPA Region 10