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EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CASCADE PETROLEUM  
TRANSPORTATION, INC.  
Portland, Oregon

Respondent.

DOCKET NO. CWA-10-2015-0099

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 Section 311(b)(6)(B)(ii) of the Clean Water Act (CWA), as amended by the Oil Pollution Act of 1990. CWA § 311(b)(6)(B)(ii), 33 U.S.C. § 1321(b)(6)(B)(ii); 33 U.S.C. §§ 2701-2720.

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

1.3. EPA is authorized to assess a Class II 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 Section 311(b)(3) of the CWA and/or who fails or refuses to comply with any regulation issued under Section 311(j) of the CWA, not to exceed \$16,000 per violation for each

day the violation continued, not to exceed \$177,500. CWA § 311(b)(3), (b)(6), (j); 33 U.S.C. § 1321(b)(3), (b)(6), (j); 40 C.F.R. 19.4.

1.4. 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 Cascade Petroleum Transportation, Inc. (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement (Final Order).

## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (Complainant) has been delegated the authority pursuant to Section 311(b) of the CWA, 33 U.S.C. § 1321(b), to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed.

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 implementing regulations that Respondent is alleged to have violated.

## **III. ALLEGATIONS**

3.1. The Oil Pollution Prevention regulations in 40 C.F.R. Part 112 implement Section 311(j) of the CWA, and establish requirements for preventing the discharge of oil. These requirements apply to owners and 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 facility location, could reasonably be expected to discharge oil in harmful quantities to navigable waters of the United States or adjoining shorelines. CWA § 311(j), 33 U.S.C. § 1321(j); 40 C.F.R. Part 112.

3.2. Quantities of oil which may be harmful to the public health or welfare or the environment of the United States include discharges of oil that cause 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. CWA § 311(b)(4), 33 U.S.C. § 1321(b)(4); 40 C.F.R. § 110.3; Exec. Order No. 11735, 38 Fed. Reg. 21243 (Aug. 7, 1973).

3.3. Respondent, Cascade Petroleum Transportation, Inc., is a domestic business corporation organized under the laws of the State of Oregon, and is a person within the meaning of Sections 311(a)(7) and 502(5) of the CWA; 33 U.S.C. §§ 1321(a)(7), 1362(5).

3.4. At all times relevant to this Consent Agreement, Respondent owned and operated a 2000 Kenworth T800 tanker truck with vehicle identification number 1XKDPB0X0YR855413.

3.5. At all times relevant to this Consent Agreement, Respondent owned and/or operated a 6,600 gallon pull trailer, which was connected to the 4,500 gallon tanker truck referenced in Paragraph 3.4 on the morning of March 12, 2012.

3.6. At all times relevant to this Consent Agreement, the tanker truck and pull trailer referenced in Paragraphs 3.4 and 3.5 were “onshore facilities.” CWA § 311(a)(6), (10), 33 U.S.C. § 1321(a)(6), (10).

3.7. On March 12, 2012, Respondent’s “onshore facilities” were traveling east bound in the vicinity of mile marker 31.5 on U.S. Highway 58, near Westfir, Oregon, where they left

the east bound lane of traffic and overturned into the ditch on the west side of U.S. Highway 58.

3.8. Following the accident described in Paragraph 3.7, approximately 5,600 gallons of “oil” was “discharged” from the “onshore facility” described in Paragraph 3.5. CWA § 311(a)(1), (2), 33 U.S.C. § 1321(a)(1), (2).

3.9. The oil discharged in Paragraph 3.8 was discharged onto surface soil and surface water in or near a ditch on the west side of U.S. Highway 58. CWA § 311(a)(1), 33 U.S.C. § 1321(a)(1).

3.10. The oil discharged in Paragraphs 3.8 and 3.9 flowed from the ditch, into Deception Creek, a tributary of the Middle Fork of the Willamette River, from which it discharged into the Middle Fork of the Willamette River.

3.11. The discharged oil also flowed from the ditch into a “wetland” abutting and incorporating the ditch in the vicinity of the accident site. The wetland drains into Deception Creek, which drains into the Middle Fork of the Willamette River. 33 C.F.R. § 328.3(a), 40 C.F.R. § 110.1.

3.12. The Middle Fork of the Willamette River is a “navigable water” and “waters of the United States,” and is subject to the jurisdiction of the CWA. CWA § 502(7), 33 U.S.C. § 1362(7); 33 C.F.R. § 328.3(a); 40 C.F.R. §§ 110.1, 232.2; CWA § 311, 33 U.S.C. § 1321.

3.13. Under the Oregon Department of Environmental Quality’s direction, surface water sampling was conducted to document impacts to surface water. This sampling was conducted daily from the date of the accident until March 24, 2012 to document the extent and magnitude of impacted surface water. Surface water samples taken from the creek exceeded applicable water quality standards throughout the month of March.

3.14. **Violation:** Surface water samples taken from the creek exceeded applicable water quality standards throughout the month of March and therefore, the discharge of oil was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3(a), in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

3.15. EPA is authorized to assess a civil penalty against any owner, operator, or person in charge of an onshore facility who fails or refuses to comply with any regulation issued under Section 311(j) of the CWA, not to exceed \$16,000 per violation, not to exceed \$177,500. CWA § 311(b)(6)(B)(i)-(j), 33 U.S.C. § 1321(b)(6)(B)(i)-(j); 40 C.F.R. Part 19.

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

4.1. Respondent admits the jurisdictional allegations contained in Part III of this Consent Agreement. Respondent neither admits nor denies the specific factual allegations contained in Part III of this Consent Agreement.

4.2. Penalty: Pursuant to Section 311(b) of the CWA, 33 U.S.C. § 1321(b), and in consideration of statutory penalty factors identified in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$60,300. This penalty amount is based upon Respondent's agreement to pay a \$16,000 penalty to the State of Oregon for the same incident alleged above, and Respondent's effective spill response.

4.3. Respondent consents to the issuance of the attached Final Order and to payment of the civil penalty set forth in Paragraph 4.2 within 30 days of the effective date of the Final Order. 40 C.F.R. § 22.31(c).

4.4. 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  
PO Box 979077  
St. Louis, MO 63197-9000

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

4.5. Concurrent with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.4 on the Regional Hearing Clerk and EPA Compliance Officer at the following addresses:

Candace Smith, Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, M/S ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101  
[Smith.candace@epa.gov](mailto:Smith.candace@epa.gov)

Stacey Erickson, Compliance Officer  
U.S. Environmental Protection Agency  
Region 10, M/S OCE-133  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101  
[Erickson.stacey@epa.gov](mailto:Erickson.stacey@epa.gov)

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

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. If such a failure to pay occurs, Respondent may be subject 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.* Interest shall accrue from the effective date of the Final Order, at the rate established by the Secretary of the Treasury, and applied to any portion of the assessed penalty which remains unpaid 30 days after the effective date of the Final Order. CWA § 311(b)(6)(H), 33 U.S.C. § 1321(b)(6)(H); 31 U.S.C. § 3717(a)(1); 40 C.F.R. § 13.11(a)(3).

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) 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. *Federal Tax.* The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, represent 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 and waives any right to appeal the Final Order set forth in the Final Order.

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

4.12. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

5-7-15

FOR RESPONDENT:

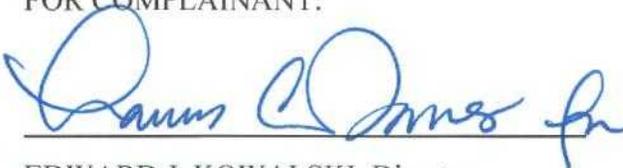


JASON TINDALL  
Cascade Petroleum Transportation, Inc.

DATED:

5-14-15

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement

**BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

CASCADE PETROLEUM  
TRANSPORTATION, INC.  
Portland, Oregon

Respondent.

**DOCKET NO. CWA-10-2015-0099**

**FINAL ORDER**

1.1. 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.

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 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.

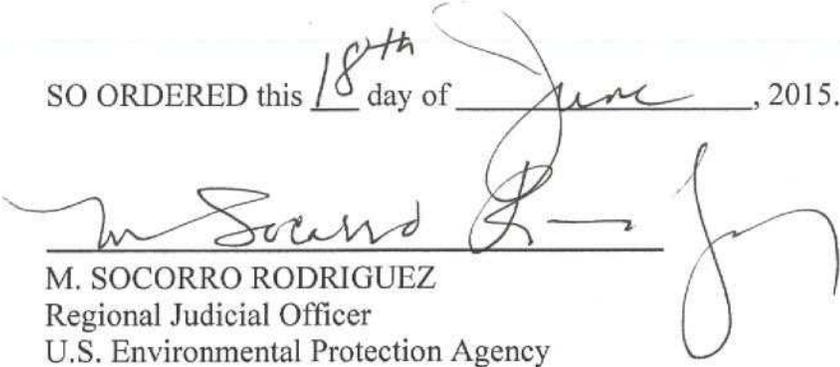
1.4. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any

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. Pursuant to Section 311(b)(6)(B)(ii) and (b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), (C)(i), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

1.6. This Final Order shall become effective upon filing.

SO ORDERED this 18<sup>th</sup> day of June, 2015.

  
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M. SOCORRO RODRIGUEZ  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in: **In the Matter of: Cascade Petroleum Transportation, Inc., Docket No. CWA-10-2015-0009**, was filed, and served as follows, on the signature date below.

The undersigned certifies that a true and correct electronic copy of the document was delivered to:

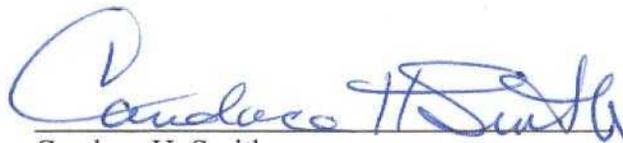
Chris Bellovary  
U.S. Environmental Protection Agency  
Region 10, M/S: ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

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

Jason Tindall  
Cascade Petroleum Transportation, Inc.  
2606 North Newark Street  
Portland, Oregon 97217

Dated

19<sup>th</sup> June 2015



Candace H. Smith  
Regional Hearing Clerk  
EPA Region 10