

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF)
J.B. Hunt Transport, Inc.)
Respondent)
_____)
Docket No. CWA-04-2010-5132(b)

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

2010 JUN 29 PM 2:29
HEARING CLERK
EPA REGION 4

LEGAL AUTHORITY

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 (“CWA”), 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

Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this Consent Agreement and Final Order (CAFO), and Respondent hereby agrees to comply with the terms of this CAFO. For purposes of this CAFO and settlement of this action, Respondent admits to the jurisdictional statements contained herein.

Stipulations

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

1. J.B. Hunt Transport, Inc., (“Respondent”) is a corporation organized under the laws of Georgia doing business in the State of Alabama. Respondent is a person within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).

2. Respondent was, at all times relevant to this Consent Agreement and Final Order, the owner and operator within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), of a transportation vehicle (“the facility”) that was in Cleburne County, Alabama, during the time of discharge.

3. The facility is an onshore facility within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

4. Section 311(b)(3) of the CWA, 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.

5. For purposes of Section 311(b)(3) and (b)(4) of the CWA, 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.

Allegations of Complainant

Complainant alleges, and Respondent neither admits or denies, that:

6. On March 25, 2008, a motor vehicle accident occurred in Cleburne County, Alabama, that involved a tractor-trailer owned and operated by Respondent. The accident resulted in damage to both saddle fuel tanks of the tractor and a release of diesel fuel. It is estimated that approximately 100 gallons (2.4 bbls.) of "oil" (Diesel Fuel Oil) as defined in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), was released from the saddle tanks of the tractor as a result of the motor vehicle accident, some of which reached an unnamed tributary of the Tallapoosa River, a navigable water as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1, and subject to the jurisdiction of Section 311 of the CWA (hereinafter the "Incident").

7. The Incident caused a sheen upon or discoloration of the surface of the unnamed creek and/or its adjoining shoreline, 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 CWA.

Waiver of Rights

8. Solely for the purpose of this Consent Agreement and Final Order, Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(i) of the CWA, 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 CWA, 33 U.S.C. § 1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

Penalty

9. Complainant proposes, and Respondent consents to, the assessment of a civil penalty of Three Thousand Dollars (\$3,000.00).

Payment Terms

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

10. No later than 30 days after the effective date of the Final Order, the Respondent shall pay the amount of \$3,000.00 by means of a corporate cashier's check or certified check, or by electronic funds transfer (EFT), or on-line. If paying by check, the Respondent shall submit a corporate cashier's check 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
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If the Respondent sends payment by an overnight commercial delivery service such as DHL, FedEx or UPS, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 418-1028

If the Respondent sends payment by wire transfer, the wire transfer should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency."

Respondent may also elect the On Line Payment Option, available through the Department of Treasury. This payment option can be accessed at www.pay.gov. Enter SFO 1.1 in the search field and then open the form and complete required fields.

11. 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 a wire transfer or online payment, copies of the wire transfer or online confirmation) to the following people:

Patricia Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency
US EPA - Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

and to:

Larry L. Lamberth, Chief
South Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. Environmental Protection Agency
US EPA - Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

12. 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 CWA, 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

13. The Final Order shall be binding upon Complainant and Respondent, and their officers, directors, agents, successors, and assigns.

14. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the CWA, 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. However, payment of the penalty pursuant to this CAFO does fully and finally resolve Respondent's liability under Section 311(b)(6) of the CWA for violations alleged by Complainant as to this Incident. It is further understood and agreed by Complainant and Respondent that the payment of the amounts noted herein and the execution of this CAFO is not to be construed as an admission of liability on the part of Respondent but that said payment is in compromise and settlement of the claims of Complainant.

15. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in the proceeding:

Bonnie Sawyer
Associate Regional Counsel
Office of Environmental Accountability
United States Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960
(404) 562-9539
sawyer.bonnie@epa.gov

16. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents the Respondent in this matter and who is to receive service for the Respondent in this proceeding:

David H. Wilson
Hawkins & Parnell LLP
4000 SunTrust Plaza
303 Peachtree Street, NE
Atlanta, Georgia 30308-3243
dwilson@hplegal.com

17. 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

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

For

J.B. HUNT TRANSPORT, INC.

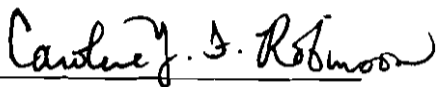
Date: June 3, 2010


~~Keith Horne~~ Ronald Griffin
Sr. Compliance Manager
J.B. Hunt Transport, Inc.

For

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 6/21/10


Caroline Y. F. Robinson, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

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)	
Respondent)	Docket No. CWA-04-2010-5132(b)
_____)	

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter with prejudice pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 29th day of June, 2010.

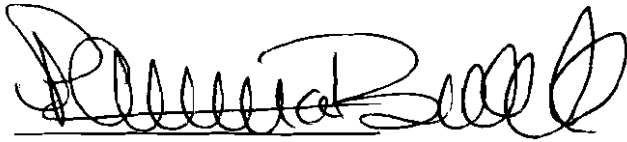
BY: Susan B. Schub
Susan Schub
Regional Judicial Officer

Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

Quantindra Smith (Via EPA's internal mail)
RCRA & OPA Enforcement and Compliance Branch
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

David H. Wilson (Via Certified Mail)
Hawkins & Parnell LLP
4000 SunTrust Plaza
303 Peachtree Street, NE
Atlanta, Georgia 30308-3243

Dated this 29 day of June, 2010.



Patricia Bullock
Regional Hearing Clerk
U.S. EPA – Region 4
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61 Forsyth Street, SW
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