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HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CWA-10-2015-0080
)	
WESTERN PETERBILT, LLC)	
)	CONSENT AGREEMENT AND
)	FINAL ORDER
)	
Seattle, WA)	
)	
)	
)	
)	
Respondent.)	
_____)	

I. STATUTORY AUTHORITY

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 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (2)(B), 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 Western Peterbilt, LLC (“WPL”) and its predecessor Western Peterbilt, Inc. (“WPI” and, together with WPL, collectively, “Respondent”) agree to issuance of, the Final Order contained in Part V of this CAFO. For all purposes of this CAFO, WPL and WPI are deemed the same legal entity and this agreement is binding upon and shall inure to the benefit of both entities.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), 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 CAFO 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. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person” into navigable waters of the United States except, *inter alia*, as

authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

3.2. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

3.3. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, solid waste, sewage, chemical wastes, biological materials, rock, sand and industrial waste. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States.” EPA’s regulations define “waters of the United States” to 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 tributaries to those waters. 40 C.F.R. § 122.2.

3.4. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term “point source” to include any “pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged.”

3.5. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines the term “person” to include, *inter alia*, a corporation, partnership or association.

3.6. WPI was a corporation, registered in the state of Washington. Effective September 2, 2014, WPI was converted to a Washington limited liability company named WPL. WPI was and WPL is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.7. During the time period January 2010 through May 2012, WPI was the operator of the truck service and repair facility located at 3707 Airport Way South in Seattle, Washington (“Facility”). WPL is the current operator of the Facility.

3.8. On May 24, 2012, Seattle Public Utilities (“SPU”) conducted dye tests at the Facility, and on May 31, 2012, dye surfaced near the intersection of 7th Avenue South and South Charlestown Street indicating a connection from the Facility’s oil water separator, wash pad and internal trench drain to the city of Seattle’s stormwater system, which then flows to the Duwamish River, a tributary of Puget Sound. At SPU’s request, WPI began collecting its process wastewater and shipping it off-site for treatment and disposal by a professional waste disposal company. WPI’s subsequent Facility investigations determined the existence of a cross connection of WPI’s process wastewater system to the city of Seattle’s stormwater system.

3.9. In August 2012, WPI entered into a voluntary compliance agreement with SPU requiring WPI to clean the stormwater systems near the Facility and to permanently plug Facility process wastewater handling system connections to the stormwater system. WPI completed these tasks in 2012.

3.10. On September 6, 2012, EPA conducted an inspection of the Facility.

3.11. EPA determined that at certain times during the period January 2010 through May 2012 (excluding August 2011), process wastewater containing vehicle-related fluids entered the Facility’s process wastewater system and was discharged to the city of Seattle’s stormwater system.

3.12. The Facility’s process wastewater is a “pollutant” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

3.13. The discharge of process wastewater that entered the City’s stormwater system from the Facility is a “discharge of a pollutant” within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

3.14. The Facility is a point source within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2. In the alternative, the Facility contains point sources.

3.15. The Duwamish River and Puget Sound are currently used, were used in the past, or may be susceptible to use, in interstate and foreign commerce, and thus are “waters of the United States” as defined in 40 C.F.R. § 122.2, and “navigable waters” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

3.16. Respondent’s discharges of process wastewater and other contaminants is not authorized by an NPDES permit, and therefore, was in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

3.17. Under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA may assess an administrative penalty when EPA finds that “any person has violated section 1311 . . . or has violated any permit condition or limitation” in a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Consequently, pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, Respondent may be liable for an administrative assessment of penalties for violations at the Facility in an amount not to exceed \$16,000 per day, up to a maximum of \$177,500, for each violation that occurred on or after January 12, 2009 through December 6, 2013.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4.3. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$129,000.

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 contained in Part V of this CAFO.

4.5. Payment under this CAFO must be made by a cashier's check or certified check 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 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Rick Cool
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-133
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondent fails 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. 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 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), 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 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, 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. 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.

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

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Part III above.

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

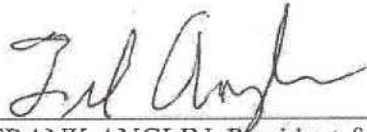
4.12. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.13. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

FOR RESPONDENT:

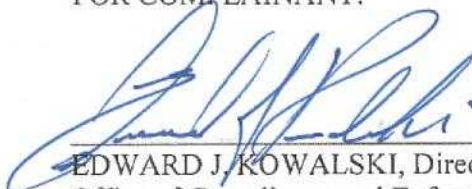


FRANK ANGLIN, President & CEO
Western Peterbilt, LLC

DATED:

FOR COMPLAINANT:

4/27/2015



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Part III above.

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. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.13. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

4/24/15

FOR RESPONDENT:


FRANK ANGLIN, President & CEO
Western Peterbilt, LLC

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

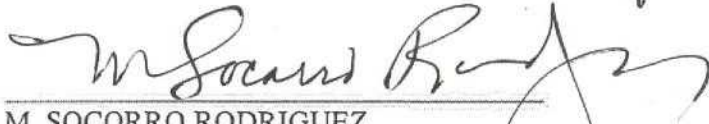
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable 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 promulgated or permits issued thereunder.

5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Washington Department of Ecology has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), 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.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 5th day of May, 2015.


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 the Matter of: Western Peterbilt, LLC, Docket No.: CWA-10-2015-0080**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:


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

Stephanie L. Mairs
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, ORC-158, Suite 900
Seattle, WA 98101

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

Lynn Manolopoulos, Esq.
Davis Wright Tremaine LLP
777 - 108th Avenue NE, Suite 2300
Bellevue, WA 98004-5149

DATED this 8th day of May, 2015


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10

