

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)	COMBINED COMPLAINT AND
)	CONSENT AGREEMENT
Keller Transport Inc.)	
1311 Taylor Place)	Docket No.: CWA-08-2013-0013
Billings, MT 59101)	
)	Simultaneous Commencement and
)	Conclusion of a Proceeding Pursuant to
Respondent)	Section 311(b)(6) of the Clean Water Act
_____)	and 40 C.F.R. § 22.13(b)

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Keller Transport, Inc., by their undersigned representatives, hereby consent and agree as follows:

A. STATUTORY AUTHORITY

1. This Combined Complaint and Consent Agreement (Agreement) is issued pursuant to section 311(b)(6) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1321(b)(6), and 40 C.F.R. § 22.13(b). Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), authorizes the Administrator of the EPA to assess civil penalties for violations of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), which authority has been properly delegated to the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, Region 8. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22, governs such proceedings. 40 C.F.R. § 22.13(b) provides that a proceeding subject to the Consolidated Rules may be simultaneously commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

B. PARTIES BOUND

2. This Agreement shall apply to and be binding upon Complainant and shall be binding upon the Respondent, its officers, directors, agents, successors, and assigns. Any change in the ownership or legal status of Respondent or the business organization, structure or status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter its responsibilities under this Agreement.

C. STATEMENT OF PARTIES

3. Respondent stipulates to EPA's jurisdiction and venue over the matters contained in this Agreement; however, Respondent neither admits nor denies the specific factual allegations contained herein.

4. Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in this Agreement, and waives its right to appeal the Final Order.

5. The signatories to this Agreement certify that they are authorized to execute and legally bind the parties they represent to this Agreement.

6. Respondent agrees that nothing in this Agreement in anyway alters, modifies, or otherwise changes the obligations agreed to by Respondent under the September 5, 2008 Amended Administrative Order (Docket Nos.: CWA-08-2008-0013 and RCRA-08-2008-0006) issued pursuant to proceedings under sections 311(c), (e), and (m) of the CWA, as amended, 33 U.S.C. § 1321 (c), (e), (m) and section 7003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6900, et. seq., as amended.

7. This Agreement contains all terms of the settlement agreed to by the parties.

8. Complainant and Respondent agree that settlement of this matter is in the public interest, and that execution of this Agreement and issuance of a final order without further

litigation and without adjudication of any issue of fact or law is the most appropriate means of resolving this matter.

D. STATUTORY AND REGULATORY FRAMEWORK

9. The objective of the Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. 33 U.S.C. § 1251(a).

10. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), in pertinent part, prohibits the discharge of any oil or hazardous substances into or upon the navigable waters of the United States or their adjoining shorelines in such quantities as may be harmful as determined by the President.

11. The term "discharge" is defined in section 311(a)(2) of the Act, 33 U.S.C. § 1321(a)(2), to include, in pertinent part, "any spilling, leaking, pumping, pouring, emitting, emptying or dumping"

12. The term "oil" is defined in section 311(a)(1) of the Act, in pertinent part, as "oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge" 33 U.S.C. § 1321(a)(1).

13. The term "navigable waters" is defined in section 502(7) of the Act as "waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7).

14. The term "navigable waters," as further defined in 40 C.F.R. § 110.1, "means the waters of the United States, including the territorial seas," and includes, *inter alia*: "(a) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide; (b) Interstate waters, including interstate wetlands; . . . ; (e) Tributaries of waters identified in paragraphs (a) through (d) of this section, including adjacent wetlands; and (f) Wetlands adjacent to waters identified in paragraphs (a) through (e) of this section"

15. In accordance with section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), the President, through a delegation to EPA, has determined, by regulation, those quantities of oil the discharge of which may be harmful to the public health or welfare or the environment of the United States. Exec. Order No. 11735, 38 Fed. Reg. 21243 (Aug. 3, 1973), and Executive Order 12777, 56 Fed. Reg. 54757 (October 22, 1991). 40 C.F.R. § 110.3 defines discharges of oil in such quantities as may be harmful to include discharges of oil that: “(a) Violate applicable water quality standards; or (b) 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.”

16. The term “sheen” is defined in 40 C.F.R. § 110.1 as an “iridescent appearance on the surface of the water.”

17. The term “sludge” is defined in 40 C.F.R. § 110.1 as “an aggregate of oil or oil and other matter of any kind in any form other than dredged spoil having a combined specific gravity equivalent to or greater than water.”

18. Pursuant to section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A), any owner, operator, or person in charge of any vessel, onshore facility or offshore facility from which oil is discharged in violation of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), may be assessed a class I or class II civil penalty.

19. The term “owner or operator” is defined in section 311(a)(6) of the Act in pertinent part as “in the case of an onshore facility, . . . any person owning or operating such onshore facility” 33 U.S.C. § 1321(a)(6).

20. According to section 311(a)(7) of the Act, “‘person’ includes an individual, firm, corporation, association, and a partnership.” 33 U.S.C. § 1321(a)(7).

21. The term “onshore facility” is defined in section 311(a)(10) of the Act as “any

facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land.” 33 U.S.C. § 1321(a)(10).

E. GENERAL ALLEGATIONS

22. Respondent is and was at all relevant times a corporation organized under the laws of Montana. Respondent’s office is located at 1311 Taylor Place, Billings, MT 59101.

23. The registered agent of Keller Transport, Inc. is Debra Will. The address of Respondent’s registered agent, on file with the Montana Secretary of State, is 1311 Taylor Place, Billings, Montana 59101.

24. Respondent is and was at all times relevant to the Agreement a “person” within the meaning of section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7).

25. At all relevant times, the truck tractor and tandem trailers that were involved in this spill were owned by Wagner Transport and operated by Respondent under a lease agreement.

26. The tandem tanker trailers and truck tractor referenced in Paragraph 25 were at all relevant times “onshore facilities” within the meaning of section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

27. Flathead Lake is a “navigable water” of the United States as defined in CWA section 502(7), 33 U.S.C. § 1362(7), and OPA section 1001(21), 33 U.S.C. § 2701(21).

F. SPECIFIC ALLEGATIONS

28. On April 2, 2008, the truck tractor referenced in Paragraph 25 pulling the tandem trailers left the roadway, struck the rock embankments and overturned. Approximately 6,380 gallons of gasoline was released from the rear trailer known as a “pup” trailer. This gasoline traveled in the ditch line a distance of approximately 130 feet to the south and 75 feet north of

the point where the trailer came to rest. The gasoline quickly seeped into the earth; no free product recovery was accomplished. The spill occurred in Indian Country on land under the jurisdiction of the Confederated Salish and Kootenai Tribes (the Tribes) on the Flathead Indian Reservation.

29. On April 6, 2008, field PID monitoring detected organic vapors at spring pools located adjacent to the lakeshore at a point approximately 510 feet northwest of the spill origin. Samples were collected and volatile petroleum hydrocarbons were detected at the Arnold Spring. Benzene levels were detected at elevated levels of 3,650 parts per billion (ppb). The discharge limitations for benzene are 2.2 ppb as defined by the Tribes' water quality standards and 5 ppb as defined by the Federal discharge limitations.

30. On April 18, 2008, Al Lange, an On-Scene Coordinator (OSC) for EPA, visited the site, confirmed that the spill had impacted soil, air, and water, and noted that the geology of the spill area comprised several dolomite ridges and numerous springs that drain into the Flathead Lake.

31. The pup trailer referenced in Paragraph 28 ruptured, releasing its contents onto the embankment directly up gradient from Flathead Lake, potentially impacting Flathead Lake without remediation intervention, and actually impacting the seeps, springs, and adjoining shorelines of the Flathead Lake, violating water quality standards, causing a film or sheen upon or discoloration of the surface of the seeps and springs and/or their adjoining shorelines and/or causing a sludge or emulsion to be deposited beneath the surface of the seeps and springs and/or upon the adjoining shorelines of the Flathead Lake.

32. As of the date of this Agreement, the water quality standards referenced in Paragraph 29 continue to be exceeded for benzene, BTEX, and total petroleum hydrocarbons at the site.

G. VIOLATION OF SECTION 311(B)(3)

33. Paragraphs 1 through 32 of this Agreement are re-alleged and incorporated herein by reference.

34. The release of gasoline referenced in Paragraph 28 was at all relevant times a “discharge” within the meaning of section 311(a)(2) of the Act, 33 U.S.C. § 1321(a)(2).

35. The discharged gasoline referenced in Paragraph 28 was at all relevant times “oil” within the meaning of section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

36. The oil that was discharged into the springs and seeps of the Flathead Lake violating water quality standards and upon the Flathead Lake’s adjoining shorelines in the form of gasoline referenced in Paragraph 28 was discharged in “quantities as may be harmful” within the meaning of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3.

37. Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. Part 19 authorize the assessment of a Class II civil penalty of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500, for violations of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), occurring after January 12, 2009.

H. PAYMENT OF CIVIL PENALTY

38. Respondent consents and agrees to pay a civil penalty in the amount of eighty three thousand five hundred dollars (\$83,500) in five payments, in the manner described below in this Paragraph.

a. The first payment of three thousand five hundred dollars (\$3,500) is due within thirty (30) calendar days from the date written on the Final Order issued by the Regional Judicial Officer that incorporates this Consent Agreement.

b. The second through fifth payments of twenty thousand dollars (\$20,000) each (for a total of \$80,000) are due on or before October 31st in the years 2013, 2014, 2015, and 2016.

c. If the due date of any of the five payments falls on a weekend or legal federal holiday, the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

d. Payments shall be made by any of the methods set forth in Appendix 1 to this Agreement.

e. At the same time that each payment is made, notice that the payment has been made shall be provided to:

Donna Inman
Enforcement Specialist
Technical Enforcement Program (8ENF-UFO)
U.S. EPA Region 8
1595 Wynkoop
Denver, CO 80202-1129

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop
Denver, CO 80202-1129

If a payment is made by cashiers or certified check, the notice shall include a copy of the check. If a payment is made in any other manner, the notice shall include documentation demonstrating that the payment was made.

f. In the event a payment is not received by the specified due date, interest on the late payment shall accrue from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to

accrue until payment in full is received (e.g., on the 1st late day for the first payment, 30 days of interest accrues).

g. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the date of the Final Order, and each subsequent 30-day period that the initial payment, or any portion thereof, remains unpaid, and a handling charge of fifteen dollars (\$15) shall be assessed on the 1st day after the due date of each subsequent payment, and each subsequent 30-day period that any such payment, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (e.g., the 121st day from the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount. Further, Respondent shall be subject to the fees, costs, and nonpayment penalty set forth in section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H).

h. If any of the five civil penalty payments required by Subparagraphs a and b of this Paragraph 38 are not paid within the time specified, EPA, in its sole, unreviewable discretion, may elect to accelerate any remaining payments, such that the remaining payment(s) will be due within thirty (30) calendar days of Respondent's receipt of notice of such acceleration from EPA. The provisions of Subparagraphs a and b of this Paragraph 38 shall apply to such accelerated payment.

i. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

39. The civil penalty set forth in paragraph 38 of this Agreement was determined by Complainant after taking into account all factors identified in section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), i.e., the seriousness of the violation or violations, the economic benefit to

the violator, if any, resulting from the violation, 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.

I. PUBLIC NOTICE

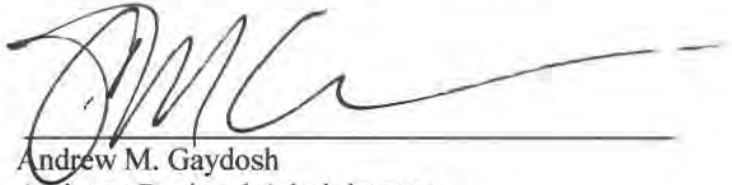
40. As required by section 311(6)(C)(i) of the Act, 33 U.S.C. § 1321(6)(C)(i), and 40 C.F.R. § 22.45, Complainant will provide public notice and a reasonable opportunity to comment on the penalty that Respondent has agreed to pay in this matter. Complainant may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that the Agreement is inappropriate, improper, or inadequate. Should Complainant modify or withdraw its consent to this Agreement, both parties agree that the Consent Agreement portion of this Agreement will be severed and the Complaint will remain valid, intact, and effective as of the date that this Agreement was initially filed. Respondent further agrees that by signing this Agreement, regardless of whether the Consent Agreement sections are ultimately upheld, Respondent waives any and all objections and defenses it may otherwise legally have to any claim based upon the Statute of Limitations relative to the filing of this Agreement.

41. If comments received during the public comment period do not require modification or withdrawal by Complainant from this Agreement, the parties agree to submit this Agreement to the Regional Judicial Officer for Region 8 following the close of the public comment period specified in 40 C.F.R. § 22.45, with a request that it be incorporated into a final order.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**

Complainant

May 1, 2013
Date



Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance, and
Environmental Justice

In the Matter of Keller Transport, Inc., Docket No.

KELLER TRANSPORT, INC.
Respondent

4/17/13

Debra M. Will

Date

Combined Complaint and Consent Agreement - Appendix 1

The following are acceptable payment methods for the civil penalty required to be paid pursuant to the Agreement.

1. If payment is being made by cashier's or certified check, submit the check, including the name and docket number of this case, payable to "Treasurer, United States of America," to:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Federal Express, Airborne, or other commercial carrier:

US Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

2. Wire Transfers:

Wire transfers must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City with the following information:

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