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U.S. EPA REGION 1
HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

In the matter of)

P.S. Marston Associates, LLC)
d/b/a Abeniqui Carriers)

38B South Road)
North Hampton, NH 03862)

Respondent.)

Docket No. CWA-01-2025-0016

**FINAL ORDER FOR CIVIL
CONSENT AGREEMENT AND
PENALTY UNDER THE
CLEAN WATER ACT**

The United States Environmental Protection Agency, Region 1 (“EPA”) issues, and P.S. Marston Associates, LLC, d/b/a Abeniqui Carriers, (“P.S. Marston” or “Respondent”) consents to, this Consent Agreement and Final Order (“CAFO”). The parties agree to resolve this action by the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) of EPA’s *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, at 40 C.F.R. part 22 (“*Consolidated Rules*”).

GENERAL ALLEGATIONS

1. EPA alleges that Respondent violated Section 311(b)(3) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1321(b)(3), by discharging oil into waters of the United States.

STATUTORY AND REGULATORY AUTHORITY

2. EPA takes this action under the authority of Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), as amended by the Oil Pollution Act of 1990.

3. Pursuant to Section 311(b)(6)(C)(i), 33 U.S.C. § 1321(b)(6)(C)(i), EPA provided public notice of, and reasonable opportunity to comment on, this action.

4. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil, as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), into or upon the navigable waters of the United States or adjoining shorelines in such quantities as may be harmful, as determined under Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4).

5. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the Act, EPA has determined that an oil discharge “may be harmful” to the public health or welfare or the environment of the United States if it causes either: (1) a violation of applicable water quality standards; (2) a film or sheen upon, or discoloration of the surface of the water or adjoining shorelines; or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines (“harmful quantity”).

6. Section 311(b)(6)(A)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(A)(i), provides for the assessment of penalties for owners, operators, or persons in charge of onshore facilities from which oil or a hazardous substance is discharged in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

7. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), defines “person” to include “an individual, firm, corporation, association, [or] partnership.”

FINDINGS OF FACT

8. Respondent is a corporation organized under the laws of the State of New Hampshire with its headquarters located at North Hampton, New Hampshire, and, therefore, is a “person” within the meaning of Sections 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7),

9. On February 28, 2024, approximately 1,680 gallons of vegetable oil was discharged from Respondent’s 6,000-gallon tanker truck into Jepson Brook that flows to the Androscoggin River during an oil transfer at Bates College located at 147 Russell Street,

Lewiston, Maine.

10. The tanker truck is considered an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2.

11. The release of vegetable oil from Respondent’s tanker truck on February 28, 2024, constitutes a “discharge” as defined by Section 311(a)(2) of the Act, 33 U.S.C. § 1321(a)(2) of “oil,” as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

12. The waters listed in Paragraph 9, *supra*, are “waters of the United States” as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. 120.2, and are therefore subject to the jurisdiction of Section 311 of the Act, 33 U.S.C. § 1321.

13. The February 28, 2024, release constitutes a discharge of oil that “may be harmful,” pursuant to 40 C.F.R. § 110.3.

CONCLUSIONS OF LAW

14. Respondent’s discharges of oil into navigable waters of the U.S. in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3 is a violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

CONSENT AGREEMENT

15. EPA and Respondent agree that settlement of this cause of action is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter. Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

16. Respondent admits the jurisdictional allegations set forth in this CAFO and waives any defenses it might have as to jurisdiction and venue.

17. Respondent neither admits nor denies the Findings of Fact, and non-jurisdictional allegations contained herein.

Waiver of Rights

18. Respondent waives the right to a hearing under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and to any appeal of the Final Order in this matter under Section 311(b)(6)(G)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(G)(ii). Respondent consents to the issuance of a Final Order without further adjudication. By signing this consent agreement, respondent additionally waives any rights or defenses that respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying the consent agreement.

Penalty

19. EPA proposes, and Respondent consents to, the assessment of a civil penalty of \$49,528 for the violations of Section 311 of the CWA, 33 U.S.C. § 1321 (hereinafter “Assessed Penalty”), alleged in this CAFO.

20. In agreeing to the penalty described in the previous paragraph, EPA has taken into account the statutory penalty factors at Section CWA Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8).

21. Within 10 days of the date this Consent Agreement becomes final, Respondent shall pay a penalty of \$49,528 for the violations of Section 311 of the CWA, 33 U.S.C. § 1321, alleged herein.

22. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA

website: <https://www.epa.gov/financial/makepayment>. For additional instructions see:

<https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

23. When making a payment, Respondent shall:

a. Identify every payment with the Respondent's name (i.e., "P.S. Marston Associates, LLC") and the docket number of this Agreement, CWA-01-2025-0016.

b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
Via electronic mail to:
r1_hearing_clerk_filings@epa.gov

and

Jaegun Lee, Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
Via electronic mail to:
Lee.Jaegun@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's names.

24. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C.

§ 1321(b)(6)(H), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within 30 days, interest accrued is waived. If the Assessed Penalty is not paid in full within 30 days, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1321(b)(6)(H). The rate of interest is the IRS standard underpayment rate.
- b. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of collection proceedings.
- c. Late Payment Penalty. A 20 percent quarterly non-payment penalty.

25. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14;
- b. Collect the debt by administrative offset (i.e., the withholding of money

payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, per to 33 U.S.C. § 1321(b)(6)(H). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

26. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

27. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

General Provisions

28. The provisions of this CAFO shall apply to and be binding on Respondent, its officers, directors, successors, and assigns.

29. The civil penalty provided under this CAFO, and any interest, nonpayment

penalties, and charges described in this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not tax deductible for purposes of federal, state, or local law. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agree not to use those payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

30. This CAFO does not constitute a waiver, suspension, or modification of the requirements of the CWA or any regulations or permits promulgated thereunder. Payment of the penalty pursuant to this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in this CAFO.

31. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

32. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which the Complaint and this CAFO is based, or for Respondent's violation of any applicable provision of law.

33. Except as described in paragraphs 24 and 25 above, the parties shall bear their own costs and fees in this action, including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

34. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

1. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
2. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
3. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at Chalifoux.Jessica@epa.gov within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

4. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

35. As of the effective date of this CAFO, Respondent certifies that the Facility is in compliance with the CWA and regulations promulgated thereunder. Respondent's obligations under the CAFO shall end when it has paid in full the scheduled civil penalty, and any interest and nonpayment penalties, required by this CAFO.

36. The terms, conditions, and requirements of this CAFO may not be modified or amended except upon the written agreement of all parties, and approval of a Regional Administrator or his or her properly authorized delegate.

37. Respondent agrees to acceptance of both (a) EPA's digital or an original signature on this CAFO and (b) service of the fully executed CAFO on the Respondent by mail or electronically by e-mail at the following address(es): twilliams@dwpm.com. EPA agrees to acceptance of the Respondent's digital or an original signature on this CAFO.

38. Respondent understands that the mailing or e-mail address may be made public when the CAFO and Certificate of Service are filed and uploaded to a searchable database.

39. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

FOR RESPONDENT P.S. MARSTON ASSOCIATES, LLC:



Date: 2/19/25

Frank Roberts, President
Name, Title (printed)

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

James Chow, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 1

Dated via electronic signature

FINAL ORDER

1. EPA has provided the public a thirty-day opportunity for public notice and comment on this proposed CAFO, pursuant to Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i) and 40 C.F.R. § 22.45(b).

2. The foregoing Consent Agreement is hereby ratified and incorporated by reference into this Final Order.

3. Respondent is hereby ordered to comply with the terms of the above Consent Agreement, which will become final 30 days from the date the Final Order is transmitted from Regional Judicial Officer to the Regional Hearing Clerk unless a petition to set aside the Final Order is filed by a commenter pursuant to Section 311(b)(6)(C)(iii) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(iii), and 40 C.F.R. Part 22.

LeAnn Jensen
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1

Dated via electronic signature