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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
PENINSULA TRUCK LINES, INC.) DOCKET NO. CWA-10-2017-0002
Auburn, Washington)
Respondent.)
_____)
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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 Peninsula Truck Lines, Inc. (“Respondent” or “permittee”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

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 redelegate 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. CWA Section 301(a), 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 CWA Section 402, 33 U.S.C. § 1342. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that a state with an approved NPDES program may issue permits for the discharge of pollutants into waters of the United States upon such specific terms and conditions as the state may prescribe.

3.2. CWA Section 502(12), 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.” CWA Section 502(7), 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.

3.3. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, dredged spoil, rock, sand, chemical wastes and industrial waste.

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 402(p) of the CWA, 33 U.S.C. § 1342(p), specifies that an NPDES permit is required for any stormwater discharge “associated with industrial activity.” Stormwater discharge associated with industrial activity is defined in 40 C.F.R. § 122.26(b)(14).

3.6. The State of Washington has a federally approved NPDES permit program administered by the Washington Department of Ecology (“Ecology”).

3.7. In October 2009, Ecology reissued the Washington Industrial Stormwater General Permit (“2010 Stormwater GP”) pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The 2010 Stormwater GP became effective on January 1, 2010 and had an expiration date of January 1, 2015. The 2010 Stormwater GP was modified with a new effective date of July 1, 2012. The 2010 Stormwater GP authorized certain discharges of stormwater associated with industrial activity at permitted facilities. In December 2014, Ecology reissued the Washington Industrial Stormwater General Permit which became effective on January 2, 2015 and expires on December 31, 2019.

3.8. The 2010 Stormwater GP required facilities engaged in certain industrial activities to apply for coverage under the permit if stormwater from the facility discharges to a surface water body, or to a storm sewer system that discharges to a surface water body. Permittees were

required to comply with the conditions and requirements set forth in the applicable Stormwater GP.

3.9. Respondent is a corporation organized under the laws of the State of Washington and is therefore a “person” as defined under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.10. Respondent owns and operates a freight transfer facility (“Facility”) located in Auburn, Washington.

3.11. The Facility’s stormwater discharges contain “pollutants” within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12).

3.12. The Facility, which was under Respondents’ control at all times relevant to this action, discharges stormwater offsite into a drainage ditch which enters Mill Creek. Mill Creek flows into the Green River. The drainage ditch is a “water of the United States” as defined in 40 C.F.R. § 122.2 and therefore a “navigable water” as defined in CWA Section 502(7), 33 U.S.C. § 1362(7).

3.13. 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.

3.14. At all times relevant to this CAFO, Respondent had coverage under the 2010 Stormwater GP at the Facility.

3.15. Respondents violated the 2010 Stormwater GP numerous times between June 2011 and October 2014. Violations of the 2010 Stormwater GP were discovered during an EPA inspection of the Facility on September 29, 2014 and October 1, 2014 and EPA’s review of Respondents’ stormwater pollution prevention plan (“SWPPP”).

Count 1: Failure to Comply with SWPPP Requirements

3.16. Section S3.A.6 of the 2010 Stormwater GP required the permittee to sign and certify the SWPPP. At the time of the October 1, 2014 EPA inspection, the SWPPP was not signed or certified.

3.17. Section S3.B.1.e of the 2010 Stormwater GP required the permittee to identify sample collection locations on the SWPPP's site map. At the time of the October 1, 2014 EPA inspection, the SWPPP site map did not identify sample collection locations.

3.18. Section S3.B.1.c of the 2010 Stormwater GP required the permittee to identify the location of the treatment system. At the time of the October 1, 2014 EPA inspection, the SWPPP site map did not identify the location of the treatment system.

3.19. Section S3.A.4.b of the 2010 Stormwater GP required the permittee to update its SWPPP to reflect a change in treatment system. At the time of the October 1, 2014 EPA inspection, the SWPPP had not been updated to reflect the treatment system change incorporated in March 2011.

3.20. Section S3.B.3 of the 2010 Stormwater GP required the permittee to update the pollution prevention team in the SWPPP. At the time of the October 1, 2014 EPA inspection, the pollution prevention team identified in the SWPPP had not been updated.

Count 2: Failure to Comply with Sampling Requirements

3.21. Section S9.A.4 of the 2010 Stormwater GP required the permittee to submit sampling data for each reporting period on a Discharge Monitoring Report (DMR) postmarked or received by Ecology by the DMR due dates specified in the 2010 Stormwater GP.

Respondent failed to submit timely DMRs for the January - March 2014 reporting period due May 15, 2014 and the April – June 2014 reporting period due August 14, 2014.

3.22. Section S9.C.1.j of the 2010 Stormwater GP required the permittee to retain copies of all reports required by the permit onsite for a minimum of five years. Respondent failed to retain reports for the January – March 2014 reporting period due May 15, 2014 and the April – June 2014 reporting period due August 14, 2014 onsite.

Count 3: Failure to Comply with Inspection Documentation Requirements

3.23. Section S7.A.1 of the 2010 Stormwater GP required the permittee to document monthly visual inspections. Between June 2011 through December 2011 and January 2012 through December 2012, Respondent failed to document monthly visual inspections.

3.24. Section S9.C.1.d of the 2010 Stormwater GP required the permittee to retain monthly visual inspection reports onsite for a minimum of five years. Respondent failed to retain monthly visual inspection reports onsite for January 2013 through December 2014.

3.25. Section S7.C.1.c of the 2010 Stormwater GP required the permittee to certify compliance status. Between January 2014 and June 2014, Respondent failed to certify compliance status.

3.26. Section S7.C.1.f of the 2010 Stormwater GP required the permittee to include a certification and signature of an authorized representative with the inspection report. Between January 2013 and September 2014, Respondent failed to include a certification and signature of an authorized representative.

Count 4: Failure to Comply with Sample Documentation Requirements

3.27. Section S4.B.3.a and S4.B.3.b of the 2010 Stormwater GP required the permittee to record sample date and time and to retain onsite for review. Respondent failed to record

sample date and time and retain onsite for review pH and oil sheen sample readings for two quarters in 2011; four quarters in 2012; two quarters in 2013; and three quarters in 2014.

3.28. Section S5.A of the 2010 Stormwater GP required the permittee to comply with benchmark effluent limitations and sampling requirements. Respondent failed to comply with benchmark effluent limitations and sampling requirements in 2011 and 2014.

3.29. Section S4.B.1.a and S4.B.2.a of the 2010 Stormwater GP required the permittee to designate and sample the discharge from each designated location. At the time of the October 1, 2014 EPA inspection, Respondent had failed to designate and sample the discharge from the second outfall.

Count 5: Failure to Comply with Annual Reporting Requirements

3.30. Section S9.B.1 and S9.B.4 of the 2010 Stormwater GP required the permittee to submit a complete and accurate Annual Report to Ecology no later than May 15th of each year and to retain annual reports onsite. Respondent failed to submit a complete annual report for 2011 and to retain the report onsite.

Count 6: Failure to Comply with Best Management Practice Requirements

3.31. Section S3.B.4.b.i.2.d and S3.B.4.b.i.2.g of the 2010 Stormwater GP required the permittee to comply with operational source control best management practices (“BMPs”). At the time of the October 1, 2014 EPA inspection, Respondent was not in compliance with operational source control BMPs.

3.32. Section S3.B.4.b.i.4.a of the 2010 Stormwater GP required the permittee to comply with certain Spill Prevention and Emergency Cleanup Plan (“SPECP”) requirements. At the time of the October 1, 2014 EPA inspection, Respondent was not in compliance with SPECP requirements.

3.33. Section S3.B.4.b.i.3.a of the 2010 Stormwater GP required the permittee to comply with preventative maintenance BMPs on a specified schedule/frequency. Respondent failed to include a schedule/frequency and inspect all equipment/vehicles for leaking fluids such as oil and antifreeze.

3.34. Section S9.C.1.g of the 2010 Stormwater GP required the permittee to retain BMP maintenance records onsite for a minimum of five years. At the time of the October 1, 2014 EPA inspection, Respondent failed to provide documentation of good housekeeping BMPs—specifically related to the removal of accumulated sediment.

3.35. Section S8.D of the 2010 Stormwater GP required the permittee to comply with Level 3 Corrective Action – Treatment BMPs requirements. Respondent failed to comply with such requirements from June 1, 2011 through December 1, 2011.

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

IV. CONSENT AGREEMENT

4.1. For the purpose of this proceeding, 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 \$36,800.

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-113
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Maria Lopez
U.S. Environmental Protection Agency
Idaho Operations Office
950 West Bannock Street
Boise, ID 83702

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, where possible, corrected the violation(s) alleged in Part III above and further certifies that the subject facility is in compliance with the terms and conditions of the site SWPPP and the 2014 Stormwater GP.

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:

10-18-16

FOR RESPONDENT:



BRENT VANDER POL, President
Peninsula Truck Lines, Inc.

DATED:

12/5/2016

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.

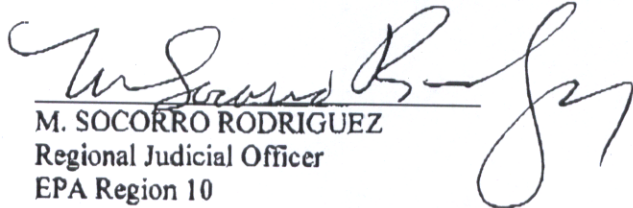
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable 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 8th day of December, 2016.


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: Peninsula Truck Lines, Inc., Docket No.: CWA-10-2017-0002**, 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 Ebright
Office of Regional Counsel
1200 Sixth Avenue, Suite 900
Mail Stop ORC-113
Seattle, Washington 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:

JAMES A. Tupper, Jr.
Tupper Mack Wells PLLC
2025 First Avenue, Suite 1100
Seattle, WA 98121

DATED this 9 day of December, 2016



Signature

Teresa Young
Regional Hearing Clerk
EPA Region 10



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

OCT 13 2016

OFFICE OF
COMPLIANCE AND ENFORCEMENT

Reply To: OCE-101

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Ms. Heather Bartlett
Manager, Water Quality Program
Washington Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

Re: Peninsula Truck Lines, Inc.
Auburn, WA

Dear Ms. Bartlett:

This is to advise you of a penalty action which Region 10 of the U.S. Environmental Protection Agency (EPA) plans to initiate in the state of Washington. The proposed action is in response to alleged violations of the Clean Water Act by Peninsula Truck Lines, Inc., at its facility located at 701 6th Street Northwest, Auburn, Washington.

Please consider this an opportunity to provide EPA with any comments the Washington Department of Ecology may have regarding this action. A copy of the public notice will be made available at <http://yosemite.epa.gov/r10/enforce.NSF>. Any comments or questions you may have regarding this action may be directed to Maria Lopez of my staff at (208) 378-5616. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward J. Kowalski".

Edward J. Kowalski
Director

By email

cc: Greg Stegman
Washington Department of Ecology
Northwest Regional Office



URL: https://yosemite.epa.gov/R10/ENFORCE.NSF/Current+Public+Notices/peninsula-truck_cwa_2016
 Region 10: the Pacific Northwest
 Last updated on 11/22/2016

You are here: [EPA Home](#) [Region 10](#)

Public Notice: Proposed Penalty Against Peninsula Truck Lines for Clean Water Act Violations

Description: Pursuant to Section 309(g)(4) of the Clean Water Act (CWA), the EPA is providing public notice of the proposed penalty described below. In order to provide opportunity for public comment, the EPA will not take final action in this proceeding prior to 40 days after publication of this notice.

EPA proposes to commence an administrative penalty action against Peninsula Truck Lines, Inc., ("Respondent") for violations of the CWA by its Peninsula Truck Lines, Inc. facility. The facility is covered by the National Pollutant Discharge Elimination System (NPDES) Washington Industrial Stormwater General Permit (ISGP) CWA violations include non-compliance with the 2010 Washington State Storm Water General Permit between June 2011 and October 2014. EPA proposes to assess a penalty of \$36,800.

This is a Class II administrative penalty proceeding, governed by Section 309(g)(2)(B) of the CWA and the procedural rules found at 40 CFR Part 22. The requirements that apply to public comment and participation are set forth in 40 CFR 22.45.

For additional information on this action or to obtain a copy of the Consent Agreement and Final Order, please contact [Maria Lopez](mailto:lopez.maria@epa.gov) (lopez.maria@epa.gov), 208-378-5616.

Comments Accepted: Persons wishing to comment on the EPA's proposed action or to become participants in this action may do so by submitting their address and telephone number, along with written comments, to the Regional Hearing Clerk at the address below within 30 days of the date of this notice.

Regional Hearing Clerk:	Complainant:	Respondent:
Teresa Young, Regional Hearing Clerk U.S. Environmental Protection Agency Region 10 (ORC-113) 1200 Sixth Avenue, Suite 900 Seattle, Washington 98101-3140 (206) 553-1632	Edward J. Kowalski, Director Office of compliance and Enforcement U.S. Environmental Protection Agency Region 10 (OCE-101) 1200 Sixth Avenue, Suite 900 Seattle, Washington 98101-3140	Peninsula Truck Lines, Inc. 701 6th Street Northwest Auburn, WA 98001

Location of Facility: Peninsula Truck Lines, Inc., 701 6th Street Northwest, Auburn, WA 98001

Applicable Permit Number: WAR003742

Business/activity of Respondent: Freight Transfer – Sector P

Public Notice Summary

Action: Penalty assessment under the Clean Water Act

Date of Notice: October 21, 2016

Comment Period Ends: November 20, 2016

Case Name: Peninsula Truck Lines, Inc.

Complaint Docket Number: CWA-10-2017-0002

How to Submit Comments: In accordance with 40 CFR 22.45, anyone wishing to comment on or participate in this proceeding must notify the Regional Hearing Clerk within 30 days of this notice. Please provide your name, complete mailing address, and any comments you have on this action.