



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2017 APR 26 AM 11:18

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: CWA-08-2017-0012

IN THE MATTER OF:

BASIN WESTERN, INC.

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 26<sup>th</sup> DAY OF April, 2017.

*Katherin E. Hall*

Katherin E. Hall  
Regional Judicial Officer

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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IN THE MATTER OF: )  
)  
Basin Western, Inc. )  
3639 East Highway 40 )  
P O Box 877 )  
Ballard, Utah 84066 )  
Respondent. )  
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)  
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)

Docket No. **CWA-08-2017-0012**  
  
**COMBINED COMPLAINT AND  
CONSENT AGREEMENT**  
  
**Proceeding to Assess Civil Penalty  
Under Section 311  
of the Clean Water Act**

The U.S. Environmental Protection Agency, Region 8 (EPA), and Basin Western, Inc. (Respondent), by their undersigned representatives, hereby consent and agree as follows:

**I. AUTHORITY**

- 1. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. This Combined Complaint and Consent Agreement (CCCA) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and is executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
- 2. EPA has jurisdiction over this matter pursuant to section 311(b)(6) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6).

**II. PARTIES BOUND**

- 3. This CCCA, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, agents, successors and assigns. Each signatory to this CCCA certifies that they are authorized to execute and legally bind the party they represent to this CCCA.

**III. STATEMENT OF THE PARTIES**

- 4. Respondent admits the jurisdictional allegations contained herein and neither admits nor denies the specific factual allegations contained herein.
- 5. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth

in this CCCA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701 – 706.

6. EPA asserts that settlement of this matter is in the public interest, and EPA and Respondent agree that entry of this CCCA and its incorporation into a Final Order without further litigation and without adjudication of any issue of fact or law will avoid prolonged and complicated litigation between the parties.
7. This CCCA, upon incorporation into a Final Order and full satisfaction by the parties, shall be a complete and full resolution of Respondent's alleged liability for federal civil penalties for the violations alleged below.

#### **IV. STATUTORY AND REGULATORY FRAMEWORK**

8. The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. 33 U.S.C. § 1251(a).
9. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), in pertinent part, prohibits discharging oil into or upon the navigable waters of the United States in such quantities as may be harmful as determined under section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4).
10. The term "discharge" is defined in section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), to include, in pertinent part, "any spilling, leaking, pumping, pouring, emitting, emptying or dumping . . . ."
11. The term "oil" is defined in section 311(a)(1) of the CWA, 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).
12. The term "navigable waters" is defined in section 502(7) of the CWA as "waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7).
13. In accordance with section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), the President, through a delegation to the 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). Discharges of oil in such quantities as may be harmful 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." 40 C.F.R. § 110.3.
14. Pursuant to section 311(b)(6)(A) of the CWA, 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 CWA, 33 U.S.C. § 1321(b)(3), may be assessed a class I or class II civil penalty.

15. The term “owner or operator” is defined in section 311(a)(6) of the CWA 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).
16. According to section 311(a)(7) of the CWA, “person” includes an individual, firm, corporation, association, and a partnership. 33 U.S.C. § 1321(a)(7).
17. The term “onshore facility” is defined in section 311(a)(10) of the CWA 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).

#### **V. EPA’S FINDINGS OF FACT AND OF VIOLATION**

18. Respondent is and was at all relevant times a corporation organized under the laws of Utah.
19. Respondent is and was at all relevant times a “person” within the meaning of sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5).
20. At all relevant times, Respondent operated the tandem fuel tanker truck with pup trailer and tanker trailer (Tanker Truck) involved in the release referenced in paragraph 22 below.
21. The Tanker Truck was at all relevant times used to transport Light Natural Gasoline and meets the definition of an “onshore facility” within the meaning of section 311(a)(10), 33 U.S.C. § 1321(a)(10).
22. On or about September 24, 2015, the Tanker Truck was traveling westbound on I-84 when it left the road surface and rolled over near mile marker 96 in Mountain Green, Utah. As a result of the incident, Respondent reported that approximately 29 barrels of Light Natural Gasoline were discharged from the Tanker Truck.
23. EPA learned of the discharge described in paragraph 22 above after Respondent reported the discharge to the United States Coast Guard National Response Center (NRC) on or about September 24, 2015 (NRC Report No. 1129255).
24. The discharge described in paragraph 22 above impacted the Weber River and wetlands adjacent to the Weber River, which flows to the Great Salt Lake.
25. The discharge referenced in paragraph 22 above violated water quality standards, caused a film or sheen upon or discoloration of the surface of the water and/or its adjoining shorelines, and/or caused

a sludge or emulsion to be deposited beneath the surface of the water(s) and/or upon the adjoining shorelines of the Weber River.

26. The discharged Light Natural Gasoline referenced in paragraph 22 above meets the definition of “oil” in section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2.
27. When discharged into water, the Light Natural Gasoline referenced in paragraph 22 above, also meets the definition of “pollutant” in section 502(6) of the CWA, 33 U.S.C. § 1362(6).
28. The release of Light Natural Gasoline referenced in paragraph 22 above was at all relevant times a “discharge” within the meaning of section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2).
29. The Light Natural Gasoline that was discharged into Weber River, and upon its adjoining shorelines as a result of the release referenced in paragraph 22 above was discharged in “quantities as may be harmful” within the meaning of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3.
30. The Weber River and the Great Salt Lake identified in paragraph 24 above are and were at all relevant times “navigable waters” within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7).
31. Therefore, Respondent’s discharge of Light Natural Gasoline referenced in paragraph 22 above constitutes a violation of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

## VI. CIVIL PENALTY

32. Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. part 19 authorize the assessment of a class I civil penalty for violations of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).
33. Pursuant to section 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6)(A), and after consideration of the facts of this case as they relate to the factors set forth in section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), EPA has determined that a civil penalty of seventeen thousand dollars (\$17,000.00) is appropriate to settle this matter.
34. Respondent consents and agrees to pay a civil penalty in the amount of seventeen thousand (\$17,000.00) in the manner described below:
  - a. Payment shall be in a single payment of \$17,000.00, due no later than thirty (30) calendar days from the date of the Final Order. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is

made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Time to be considered as received that day.

- b. The payment shall be made by remitting a check or making a wire transfer or on-line payment. If paying by check, Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notations "OSLTF - 311" and the title and docket number of this case. The payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. Environmental Protection Agency  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank  
Government Lockbox No. 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101  
Contact: Craig Steffen, 513-487-2091, [steffen.craig@epa.gov](mailto:steffen.craig@epa.gov)

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Beneficiary: US Environmental Protection Agency

If remitted through the Automated Clearing House (ACH) for receiving U.S. currency:

U.S. Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 -- checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737

If remitted online with a debit card or credit card: No user name, password, or account number is necessary for this option. Online payment can be accessed via WWW.PAY.GOV, entering SFO 1.1 in the form search box on the left side of the screen, opening the form, and following the directions on the screen.

Copies of the check or record of payment shall be sent to:

Darla Hohman  
U.S. Environmental Protection Agency (8ENF-W-WO)  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

and

Melissa Haniewicz  
Regional Hearing Clerk  
U.S. Environmental Protection Agency (8RC)  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

A transmittal letter identifying the case title and docket number must accompany the remittance and copies of the check.

35. If the payment is not received by the specified due date, interest accrues 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.
36. A handling charge of fifteen dollars (\$15) shall be assessed the 31<sup>st</sup> day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 30 days of the due date. Payments are first applied to outstanding handling charges, second to penalty assessments, third to accrued interest, and then to the outstanding principal amount.
37. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.


## **VII. GENERAL PROVISIONS**

38. Nothing in this CCCA shall relieve Respondent of the duty to comply with the CWA and any regulation, order, or permit issued pursuant to the CWA.
39. Any failure by Respondent to comply with this CCCA shall constitute a breach of this CCCA and may result in referral of the matter to the United States Department of Justice for enforcement of this CCCA and such other relief as may be appropriate.
40. Nothing in this CCCA shall be construed as a waiver by EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of any failure by Respondent to comply with this CCCA.
41. Each party shall bear its own costs and attorneys' fees in connection with this matter.




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

Date: 4/25/2017

By:   
Kenneth M. Champagne, Unit Chief  
Wetlands & OPA Technical Enforcement Program  
Office of Enforcement, Compliance,  
and Environmental Justice

Date: 4.25.2017

By:   
James H. Eppers, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance,  
and Environmental Justice

United States Environmental Protection Agency  
1595 Wynkoop Street, 8ENF  
Denver, Colorado 80202-1129

Complainants

**BASIN WESTERN, INC.**

Date: 4/17/2017

By:   
Lloyd Dean, President

Basin Western, Inc.  
P.O. Box 877 – East Highway 40  
Roosevelt, Utah 84066

Respondent

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT and FINAL ORDER** in the matter of **BASIN WESTERN, INC.;** **DOCKET NO.: CWA-** was filed with the Regional Hearing Clerk on April 26, 2017.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Abigail Dean, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on April 26, 2017, to:


Respondent

Lloyd Dean  
Basin Western, Inc.  
3639 East Highway 40  
PO Box 877  
Ballard, Utah 84066

And emailed to:

Jessica Chalifoux  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

April 26, 2017

  
\_\_\_\_\_  
Melissa Haniewicz  
Regional Hearing Clerk

