

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In The Matter Of:	) Docket No. CWA-05-2025-0011
	)
K & V TRANSPORT, INC.	) Proceeding to Assess a Class II Civil Penalty
	) Under Section 311(b)(6) of the Clean Water
Superior, Wisconsin,	) Act, 33 U.S.C. § 1321(b)(6)
	)
<u>Respondent.</u>	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 311(b)(6)(A)(i) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6)(A)(i), and Sections 22.1(a)(6), 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Superfund Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is K & V Transport, Inc., a corporation, doing business in Wisconsin.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Judicial Review and Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and alleged violations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO. Respondent 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.

Statutory and Regulatory Background

Prohibition of oil or hazardous substance discharges

9. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil or hazardous substances into or upon, among other things, the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

General provisions and enforcement of the CWA

10. Pursuant to Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), and Executive Order 11735 (Aug. 3, 1973), EPA determined by regulation the quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare or environment of the United States, which are codified at 40 C.F.R. Part 110. Under 40 C.F.R. § 110.3, discharges of oil which 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.

11. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as the waters of the United States, including the territorial seas.

12. Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2, define “onshore facility” as any facility of any kind located in, on, or under any land within the United States, other than submerged land.

13. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2, define “oil” as oil of any kind and in any form, including but not limited to: petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

14. Section 311(a)(6)(B) of the CWA, 33 U.S.C. § 1321(a)(6)(B), and 40 C.F.R. § 112.2, define “owner or operator” in the case of an onshore facility as any person owning or operating such onshore facility.

15. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2, define “person” as including an individual, firm, corporation, association, and a partnership.

16. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), and 40 C.F.R. § 112.2 define “discharge” to include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

17. EPA may assess a class II civil penalty against any owner, operator, or person in charge of any onshore facility from which oil is discharged in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), pursuant to Section 311(b)(6)(A)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(A)(i).

18. For violations of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3) EPA has authority, under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), as amended by the Debt Collection Improvement Act and the Federal Civil Penalties Inflation Adjustment Act

Improvements Act of 2015, and implemented by 40 C.F.R. Part 19, Adjustment of Civil Monetary Penalties for Inflation, to file an Administrative Complaint seeking a civil penalty of \$23,048 per violation, or an amount up to \$2,304 per barrel of oil, up to a maximum of \$288,080 for violations occurring after November 2, 2015 and penalties assessed after December 27, 2023.

Factual Allegations and Alleged Violations

19. Respondent owns and/or operates a trucking business located at 1212 North 58th Street, Superior, Wisconsin (Facility). The facility operates tractor-trailer vehicles which transport goods throughout the region.

20. Respondent is a corporation and is therefore a “person” as defined in Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7) and 40 C.F.R. § 112.2.

21. Respondent is an “owner” and “operator” of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.

22. At the time of the incident the tractor-trailer was located on land within the United States and is therefore an “onshore facility” as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

23. On June 24, 2021, a tractor-trailer operated by K & V Transport (K & V) tipped over (herein “incident”) and released approximately 6,500 gallons of a gasoline/ethanol mixture and diesel fuel in Hancock, MI (herein “release”).

24. The release occurred on US Highway 41 into the stormwater system, onto Rock Beach, City of Houghton Beach, and the Portage Ship Canal. An initial oil sheen was visible across wide areas of Portage Canal for approximately 4-miles.

25. Portage Canal is a “navigable water” of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 112.2.

26. On June 24, 2021, Respondent discharged gasoline into navigable waters of the United States in such quantities as may be harmful, in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

Civil Penalty

27. Based on analysis of the factors specified in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), the facts of this case, and the *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act*, dated August 1998, Complainant has determined that an appropriate civil penalty to settle this action is \$12,000.

28. Respondent agrees to pay a civil penalty in the amount of \$12,000 (“Assessed Penalty”) within thirty (30) days after the date the Final Order ratifying this consent agreement becomes final. The Final Order shall become final thirty (30) days after the date the Final Order ratifying this agreement is filed with the Regional Hearing Clerk (“Filing Date”)

29. 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>. Additional instructions for making payments are available at: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

30. When making a payment, Respondent shall:
- a. Identify every payment with Respondent's name, "OSLTF-311", and the docket number of this Agreement, CWA-05-2025-0011.
 - b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following persons:

Juliane Grange
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5 R5HearingClerk@epa.gov

Greg Chomycia
Superfund and Emergency Management Division
U.S. Environmental Protection Agency, Region 5
chomycia.greg@epa.gov

Rich Clarizio
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
clarizio.rich@epa.gov

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 of Respondent's name.

31. 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 within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (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 twenty percent (20%) quarterly non-payment penalty.

32. 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. §§ 131.13 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 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.

33. 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.

34. 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

35. The parties consent to service of this CAFO by email at the following email addresses: Clarizio.richard@epa.gov (for Complainant) and email ntatro@fbmjlaw.com (for Respondent). Respondent understands that the CAFO will become publicly available upon proposal for public comment and upon filing.

36. Full payment of the penalty as described in paragraph 29, above, and full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

37. Full payment of a penalty described in paragraph 29, above, and full compliance with this CAFO shall not in any case affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

38. This CAFO does not affect Respondent's responsibility to comply with the CWA and other applicable federal, state, or local laws and permits.

39. This CAFO constitutes a "prior violation" as that term is used in EPA's *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* to determine Respondent's "history of prior violations" under Section 311(b)(8) of the CWA 33 U.S.C. § 1321(b)(8).

40. The terms of this CAFO bind Respondent and its successors and assigns.

41. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CAFO.

42. Each party agrees to bear its own costs and attorney fees in this action.

43. This CAFO constitutes the entire agreement between the parties.

44. The parties acknowledge and agree that final approval by EPA of this CAFO is subject to Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i) which provides, among other procedural requirements, public notice and a reasonable opportunity to comment on any proposed penalty order.

45. The parties acknowledge and agree that final approval by EPA of this CAFO is subject to 40 C.F.R. § 22.45(c)(4) which sets forth requirements under which a person not a party to this proceeding may petition to set aside a consent agreement and final order on the basis that material evidence was not considered.

46. Unless an appeal for judicial review is filed in accordance with Section 311(b)(6)(G) of the CWA, 33 U.S.C. § 1321(b)(6)(G) or 40 C.F.R. § 22.45, this CAFO shall become effective 30 days after the date of issuance, which is the date that the Final Order contained in this CAFO is signed by the Regional Judicial Officer or Regional Administrator. The effective date for this CAFO is thirty days after it is filed with the Regional Hearing Clerk, which is after completion of the notice and comment requirements of Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i) and 40 C.F.R. §§ 22.38, 22.45.

K & V Transport, Inc., Respondent

June 24, 2025
Date

Vicki L Mack
Vicki Mack, President
K & V Transport, Inc.

United States Environmental Protection Agency, Complainant

Date

Thomas R. Short Jr., Acting Director
Superfund and Emergency Management Division

**Consent Agreement and Final Order
In the Matter of: K & V Transport, Inc.
Docket No. CWA-05-2025-0011**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective 30 days after filing with the Regional Hearing Clerk unless further petition for review is filed by a notice of appeal in the appropriate United States District Court, with notice simultaneously sent by certified mail to the Administrator of EPA and the Attorney General, pursuant to 40 C.F.R. § 22.45(c)(4)(viii). This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

By: _____
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Date: _____