

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
TRAINING CLERK

IN THE MATTER OF:)	COMBINED COMPLAINT AND
)	CONSENT AGREEMENT
Groendyke Transport Inc.,)	
)	Docket No. CWA-08-2014-0032
)	Simultaneous Commencement and
)	Conclusion of a Proceeding Pursuant to
Respondent.)	Section 311(b)(6) of the Clean Water Act
<hr/>)	and 40 C.F.R. § 22.13(b)

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

I. STATUTORY AUTHORITY

1. This Combined Complaint and Consent Agreement (Agreement) is issued pursuant to section 311(b)(6) of the Clean Water Act (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 issue a complaint that assesses 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. According to 40 C.F.R. § 22.13(b), 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).

II. 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.

III. STATEMENT OF PARTIES

3. Respondent stipulates to the 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 a final order (Final Order) approving this settlement.

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

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

7. The EPA and Respondent agree that settlement of this matter is in the public interest, and that execution of this Agreement and issuance of the Final Order without further litigation and without adjudication of any issue of fact or law is the most appropriate means of resolving this matter.

8. In accordance with section 311(b)(6)(C) of the Act, 33 U.S.C. §1321(6)(C), Complainant shall provide public notice of and reasonable opportunity to comment on the proposed issuance of a final order in this matter.

IV. STATUTORY AND REGULATORY FRAMEWORK

9. The objective of the Act is to restore and to 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). 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.

16. 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.

17. 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).

18. 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).

19. 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).

V. GENERAL ALLEGATIONS

20. Respondent is and was at all relevant times a corporation organized under the laws of Oklahoma and licensed to do business in Colorado. Respondent’s main office is located at 2510 Rock Island Blvd., Enid, OK 73701.

21. The registered agent of Groendyke Transport, Inc., is the Corporation Service Company. The address of Respondent’s registered agent on file with the Colorado Secretary of State is 1560 Broadway, Suite 2090, Denver, Colorado 80202.

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

23. At all relevant times, Respondent owned and operated the truck tractor and the tanker trailer involved in the release referenced in Paragraph 27, *infra*.

24. The tanker trailer and truck tractor referenced in Paragraph 23, *supra*, 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).

25. West Creek and the Dolores River and their adjacent wetlands are and were at all relevant times “navigable waters” within the meaning of 40 C.F.R. § 110.1, and section 502(7) of the Act, 33 U.S.C. § 1362(7).

VI. SPECIFIC ALLEGATIONS

26. On January 25, 2013, the truck tractor pulling the tanker trailer referenced in Paragraph 23 crashed, rolled down the embankment of West Creek breaching both tanks, and erupted into flames, approximately 30 miles southwest of Grand Junction, Colorado. The tanker trailer was filled with approximately 6,000 gallons of gasoline and 2,000 gallons of diesel.

27. The tanker trailer referenced in Paragraph 26 ruptured, releasing approximately 6,000 gallons of gasoline and 2,000 gallons of diesel, a portion of which burned up before entering West Creek, and a portion of which flowed into West Creek, which flows into the Dolores River approximately 10 miles downstream.

28. The Respondent’s release of 6,000 gallons of gasoline and 2,000 gallons of diesel referenced in Paragraph 27 impacted West Creek by causing a sheen seen approximately two miles downstream, violating applicable water quality standards for benzene, toluene, ethylbenzene, and xylenes (BTEX), and causing a fish-kill.

VII. VIOLATION

29. Paragraphs 1 through 28 of this Agreement are re-alleged and incorporated herein by reference.

30. The release of gasoline and diesel referenced in Paragraph 27 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).

31. The discharged gasoline and diesel referenced in Paragraph 27 were at all relevant times “oil” within the meaning of section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

32. The oil that was discharged into West Creek and its adjoining shorelines 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.

33. 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 not to exceed \$16,000 per day for each day during which the violation continues, up to a maximum civil penalty 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.

VIII. PAYMENT OF CIVIL PENALTY

34. Respondent, by signing this Agreement, herein certifies to the EPA that Respondent is now in compliance with each of the relevant provisions of the Act that formed the basis of the Complaint.

35. Respondent consents to the issuance of a final order and consents for the purpose of settlement to pay a civil penalty in the amount of one hundred and three thousand dollars (\$103,000).

36. The EPA proposes this penalty amount after considering the applicable statutory penalty factors in section 311(b)(8) of the Act, 33 U.S.C. §1321(b)(8): the seriousness

of the violation, 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.

37. Respondent consents and agrees to pay a civil penalty in the amount of one hundred and three thousand dollars (\$103,000) within 30 calendar days from the date written on the Final Order, issued by the Regional Judicial Officer that adopts this Agreement.

38. If the due date of the payment 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.

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

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

Christopher Ajayi (8ENF-UFO)	and	Tina Artemis
Environmental Engineer		Regional Hearing Clerk (8RC)
U.S. EPA Region 8		U.S. EPA Region 8
1595 Wynkoop		1595 Wynkoop
Denver, CO 80202-1129		Denver, CO 80202-1129

41. If a payment is made by 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.

42. 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).

43. 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).

44. If the civil penalty payment required by Paragraph 35 is not paid within the time specified, the EPA, in its sole, unreviewable discretion, may elect to accelerate any remaining payment(s), such that the remaining payment(s) will be due within thirty (30) calendar days of Respondent's receipt of notice of such acceleration from the EPA.

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

IX. OTHER TERMS AND CONDITIONS

46. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of this Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Agreement and for such other relief as may be appropriate.

47. Nothing in this Agreement shall be construed as a waiver by Complainant 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 Respondent's failure to perform pursuant to the terms of this Agreement.

48. This Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the civil penalty owed for violations alleged in this Agreement.

49. This Agreement resolves Respondent's liability for federal civil penalties under section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), for the alleged violations contained in this Agreement. This Agreement shall not in any case affect the EPA's right to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law whether or not alleged in this Agreement. This Agreement shall not affect Respondent's right to assert any defense in any action by the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

Each party shall bear its own costs and attorney fees in connection with all issues associated with this Agreement.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**
Office of Enforcement, Compliance, and
Environmental Justice, Complainant

Date: SEP 24 2014

By: *Eddie A. Sierra*
fw Suzanne J. Bohan
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

GROENDYKE TRANSPORT, Inc.,
Respondent

9/9/14

Date

By: 

Signatory

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 check, submit the check, including the name, docket number, and the notation, "Oil Spill Liability Trust Fund-311," payable to "**Environmental Protection Agency**" :

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
Cincinnati Finance Center Box 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Craig Steffen
513-487-2091

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"

3. ACH (also known as REX or remittance express):

Please indicate the name and docket number of this case on Automated Clearinghouse (ACH) payments to EPA made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver

ABA: 051036706

Account Number: 310006, Environmental Protection Agency

CTX Format Transaction Code 22 – checking

Physical location of US Treasury Facility

5700 Rivertech Court

Riverdale, MD 20737

US Treasury Contact Information:

Randolph Maxwell: 202-874-7026

Remittance Express (REX): 1-866-234-5681

4. On-line Payment:

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below:

www.pay.gov

Enter "sfo 1.1" (without the quotation marks) in the "Search Public Forms" field.

Click on the first link to open the form, complete required fields, and then click on "Submit Data" button at bottom of form.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8
1595 Wynkoop Street; Denver, CO 80202-1129**

PUBLIC NOTICE AND OPPORTUNITY TO COMMENT ON CLEAN WATER ACT SETTLEMENT

Action: EPA is providing notice of a Combined Complaint and Consent Agreement with penalty assessment and the opportunity for public comment on the proposed administrative penalty assessment against Groendyke Transport Inc., for discharges of oil into waters of the U.S.

Summary: EPA is authorized in Class II proceedings under Section 311(b)(6) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6), to issue orders assessing civil penalties for violations of the Act and its implementing regulations, after providing the person subject to the penalty notice an opportunity for a hearing, and after providing the public with notice of the proposed penalty, and the opportunity to submit written comments and to participate in a Class II penalty proceeding (hearing), if any. The deadline for submitting public comment is thirty (30) calendar days after issuance of this notice.

On September 24, 2014, EPA filed a Combined Complaint and Consent Agreement pursuant to Section 311(b)(6)(B)(ii) of the Act. Pursuant to Section 311(b)(6)(C) of the Act, and 40 C.F.R. § 22.45, EPA hereby notifies the public of this proposed penalty assessment:

In the matter of: Groendyke Transport Inc.,
2510 Rock Island Blvd.,
Enid, OK 73701

EPA Docket Number: CWA-08-2014-0032

Proposed penalty in the Complaint: \$103,000

Alleged violations: Discharge of 6,000 gallons of gasoline and 2,000 gallons of diesel fuel on January 25, 2013, a portion of which burned up and a portion of which flowed into West Creek, a tributary of the Delores River in Mesa County, Colorado and caused a fish kill in violation of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

Written comments on the Combined Complaint and Consent Agreement are encouraged and will be accepted at the address listed below for a period of thirty (30) calendar days after the publication of this notice. Written comments submitted by the public, as well as information submitted by Groendyke Transport Inc., will be available for public review, subject to the provisions of law restricting the disclosure of confidential information. Any person submitting written comments has a right to participate in a hearing, if one is held. The Combined Complaint and Consent Agreement is available for review between 9:00 a.m. and 4:00 p.m. at the address listed below and on the internet at: <http://yosemite.epa.gov/oa/rhc/epaadmin.nsf>.

Submit written comments to: Tina Artemis
Regional Hearing Clerk (8RC);
EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Telephone: (303) 312-6765.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of the Combined Complaint and Consent Agreement, or other documents in this proceeding (such as the regulations in 40 C.F.R. part 22, which establish procedures for hearings), or to comment upon the proposed penalty assessment, or any other aspect of the matter, should contact the Regional Hearing Clerk identified above. No action will be taken by EPA to finalize a settlement in this matter until thirty (30) calendar days after this public notice.