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EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	
	)	DOCKET NO.: CWA-10-2016-0003
ALASKA PETROLEUM DISTRIBUTING,	)	
INC.	)	
North Pole, Alaska	)	<b>CONSENT AGREEMENT AND</b>
	)	<b>FINAL ORDER</b>
	)	
Respondent.	)	

**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 311(b)(6) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1321(b)(6). 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.

1.2. Pursuant to Section 311(b)(6) of Act, 33 U.S.C. § 1321(b)(6), 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 Alaska Petroleum Distributing, Inc. (“Respondent”) 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 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), to the Regional Administrator of EPA Region 10, who has redelegated 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. Pursuant to Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), the “discharge of oil . . . into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone . . . in such quantities as may be harmful as determined by the President under paragraph (4) of this subsection, is prohibited.”

3.2. By Section 8(a) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA his section 311(b)(3) and (4) authorities to determine the “quantities of oil . . . the discharge of which may be harmful to the public health or welfare or the environment.”

3.3. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), EPA has determined that discharges of oil in such quantities that may be harmful to the public health or welfare or the environment include oil discharges that cause either: (1) a violation of applicable water quality standards; or (2) a film, 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.

3.4. Respondent is a corporation organized under the laws of the State of Alaska and is therefore a “person” within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7).

3.5. Respondent is the “owner or operator” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of a tanker truck (“Facility”). The Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

3.6. On December 9, 2014, the Facility was hauling low-sulfur diesel fuel oil near Milepost 48 of the Richardson Highway when the Facility slid off the highway, rolled onto its side, hit a pile of rip rap, and experienced a tear in its side of approximately 5 to 10 feet. The tear in the side of the Facility resulted in a spill of the contents of the tank. The spill constituted a “discharge” of “oil” within the meaning of Section 311(a)(1), (2), 33 U.S.C. § 1321(a)(1), (2).

3.7. The December 9, 2014 spill resulted in the discharge of approximately 4,400 gallons of low-sulfur diesel fuel oil into an unnamed creek which runs parallel to the Richardson Highway. At the time of the spill, the unnamed creek was reported to be iced over with eight to twelve inches of snow on top of the ice. The discharge of oil caused a violation of applicable water quality standards and/or caused a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines, and therefore constituted a harmful quantity of oil within the



meaning of 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4).

3.8. The unnamed creek flows under the Richardson Highway through a culvert and into the Tikel River, which flows into the Copper River. The Tikel River and the Copper River are “navigable water[s]” within the meaning of Sections 311(b)(3) and 502(7) of the Act, 33 U.S.C. §§ 1321(b)(3) and 1362(7).

3.9. The Tikel River is classified as an anadromous fish river, containing Coho Salmon and Chinook Salmon throughout the river. The Copper River is classified as an anadromous fish river, containing Coho Salmon, Chinook Salmon, Pink Salmon, Sockeye Salmon, Cutthroat Trout, Dolly Varden, Eulachon, and Steelhead Trout at its mouth, downstream of where the Tikel River flows into the Copper River.

3.10. Respondent’s December 9, 2014 discharge of oil from the Facility into or upon navigable waters of the United States and adjoining shorelines in a quantity that may be harmful as determined by 40 C.F.R. § 110.3, violated Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

#### **IV. CONSENT AGREEMENT**

4.1. 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 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), EPA has taken into account the seriousness of the alleged violations; Respondent’s economic benefit of noncompliance; 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. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$52,000.

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 bearing the notation "OSLTF-311." Payment sent by the U.S. Postal Service shall be addressed to:

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 checks 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

Tara Martich  
U.S. Environmental Protection Agency  
Region 10, Alaska Operations Office  
222 West Seventh Avenue, #19  
Anchorage, AK 99501

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 311(b)(6)(H) of the CWA, 33 U.S.C.

§ 1321(b)(6)(H), 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 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), 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, to the best of Respondent's knowledge the violations alleged in Part III above have been corrected.

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 in this proceeding.

4.13. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns in this proceeding.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

11-2-15

FOR RESPONDENT:

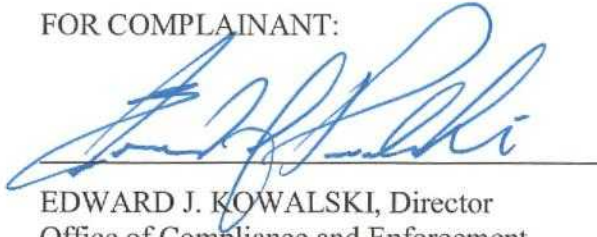


PAMELA JOHNSON, President  
Alaska Petroleum Distributing, Inc.

DATED:

11/12/2015

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement  
EPA Region 10



V. FINAL ORDER

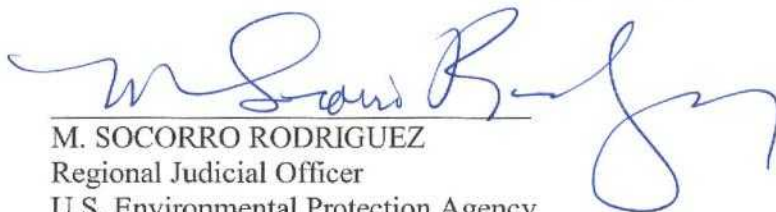
5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

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. 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), 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.

5.4. This Final Order shall become effective upon filing.

SO ORDERED this 7<sup>th</sup> day of December, 2015.



M. SOCORRO RODRIGUEZ  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Alaska Petroleum Distributing, Inc., Docket No.: CWA-10-2016-0003**, 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:

Leah Brown, Esquire  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ORC-113, Suite 900  
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:

Pamela Johnson, President  
Alaska Petroleum Distributing, Inc.  
1095 Dennis Road  
North Pole, Alaska 99705

DATED this 9<sup>th</sup> day of December, 2015

Teresa Luna

Signature

Teresa Luna  
Regional Hearing Clerk  
EPA Region 10