



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

SEP 17 2014

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Mr. William Curtis  
President  
Curtis Transport, Inc.  
1123 West Main Street  
Chesterfield, South Carolina 29709

Re: Administrative Complaint for Clean Water Act Class II Penalty  
Docket No. CWA-04-2014-5126

Dear Mr. Curtis:

Enclosed is a copy of the Administrative Complaint for a Class II Penalty (Complaint) that the U.S. Environmental Protection Agency has filed pursuant to Section 311(b)(6)(B)(ii) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, against Curtis Transport, Inc. (Respondent) for violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3). The Complaint requests that a civil penalty of up to \$177,500 be assessed for this violation.

A copy of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits” (Consolidated Rules), Title 40 of the Code of Federal Regulations (C.F.R.) Part 22, published at 64 Fed. Reg. 40176 (July 23, 1999), that apply to this matter is enclosed for your reference.

Pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1311(b)(6)(B)(ii), and 40 C.F.R. § 22.15(c), Respondent may request a hearing regarding any material fact alleged in the Complaint and on the proposed penalty assessment. The procedures for the hearing, if one is requested, are set out at 40 C.F.R. Part 22. In order to be entitled to a hearing under the CWA, Respondent must file an Answer to the Complaint within thirty (30) days after receipt of this Complaint, as outlined in Section V (Answer and Right to Request a Hearing) of the Complaint. The Answer shall clearly and directly admit, deny or explain each of the factual allegations of the Complaint with regard to which Respondent has any knowledge. If Respondent fails to submit an Answer within thirty (30) days of receipt of this Complaint, and this matter is not otherwise disposed of through settlement, Respondent may be found in default. For purposes of this action, default constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent’s right to a hearing on such factual allegations. A civil penalty will be assessed against Respondent and will become due and payable without further proceedings after a Final Order of Default is issued pursuant to 40 C.F.R. § 22.17.

Respondent may request an informal meeting with the EPA to discuss settlement of this action by contacting Teresa Mann, Senior Counsel, at (404) 562-9572. Respondent has the right to be represented by an attorney at any stage of the proceedings, including in any informal settlement discussions with the EPA. Please note that a request for an informal settlement conference does not extend the thirty (30) day period in which to submit an Answer to this Complaint.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Alan Farmer". The signature is stylized with large, overlapping loops and a prominent "G" at the beginning.

G. Alan Farmer, Director  
RCRA Division

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

**IN THE MATTER OF:**

**Curtis Transport, Inc.  
1123 West Main Street  
Chesterfield, SC**

**Respondent.**

)  
)  
) **Administrative Complaint**  
) **for Class II Penalty under**  
) **Section 311(b)(6)(B)(ii) of**  
) **the Clean Water Act,**  
) **33 U.S.C. § 1321(b)(6)(B)(ii)**  
)  
)  
) **Docket No.: CWA-04-2014-5126**

**RECEIVED  
EPA REGION IV  
2014 SEP 17 AM 11:10  
HEARING CLERK**

**Administrative Complaint**

**I. Statutory Authority**

1. This Administrative Complaint (Complaint) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 311(b)(6)(B)(ii) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990. The Administrator has delegated this authority to the Regional Administrator of EPA Region 4, who has duly redelegated this authority to the Director of the RCRA Division, EPA Region 4 (Complainant).

2. Pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” codified at 40 C.F.R. Part 22, Complainant hereby notifies Respondent of its proposal that the Administrator assess a civil penalty against Curtis Transport, Inc. (Respondent) for the discharge of oil into and upon the navigable waters of the United States and adjoining shorelines in a quantity that has been determined may be harmful in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and gives notice to Respondent of the right to file an Answer to this

Complaint and to request a hearing on any material fact alleged in the Complaint or on the appropriateness of the proposed penalty assessment.

## **II. Statutory and Regulatory Background**

3. Section 311(b)(6)(A)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(A)(i), authorizes the Administrator to 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).

4. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the “discharge of oil into or upon the navigable waters of the United States, adjoining shorelines ... in such quantities as may be harmful as determined by the President ...” to the public health or welfare or the environment of the United States, including but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

5. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), defines “discharge” as including, but not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

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

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

8. Pursuant to 40 C.F.R. § 110.1, the term “navigable waters” is further defined to include “tributaries” to waters that are “interstate waters” and/or waters that “are currently used,

were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide ....”

9. Pursuant to 40 C.F.R. § 110.3, “discharges of oil in such quantities that the Administrator has determined may be harmful to the public health or welfare or the environment of the United States include discharges of oil that: ... (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 the adjoining shorelines.”

10. Pursuant to 40 C.F.R. § 110.1, “sheen” is defined as an “iridescent appearance on the surface of water.”

11. Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5), define “person” to include an individual, firm, corporation, association, and a partnership.

12. Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), defines “onshore facility” 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.”

13. Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), defines “owner or operator” of an onshore facility as “any person owning or operating such onshore facility ....”

### **III. Allegations**

14. Respondent is a corporation organized under the laws of the State of South Carolina, with a place of business located at 1123 West Main Street, Chesterfield, South Carolina, and is registered to do business in South Carolina.

15. Respondent is a person within the definition set forth under Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

16. At all times relevant to this Complaint, Respondent was the “owner” and “operator” within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), of a

fuel tanker truck (Facility) that was involved in a single vehicle traffic accident at or about the intersection of Highway 73 and Zion Church Road, near the town of Mount Gilead, Montgomery County, North Carolina on February 28, 2010.

17. The Facility is an “onshore facility” as defined by Section 311(a)(10) of the CWA, 33 U.S.C. §1321(a)(10).

18. On February 28, 2010, Respondent discharged at least 183 barrels of E10 gasoline from its Facility onto the ground and into or upon Lower Richland Creek and its adjoining shorelines.

19. E10 gasoline is an “oil” as defined by Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).

20. Respondent’s February 28, 2010 discharge of oil from its Facility caused a sheen upon and discoloration of the surface of Lower Richland Creek and its adjoining shorelines, and therefore, was in a quantity that has been determined to be harmful to the public health or welfare or the environment of the United States under 40 C.F.R. § 110.3.

21. The sheen upon and discoloration of the surface of Lower Richland Creek and its adjoining shorelines was observed from February 28, 2010 to March 19, 2010.

22. The discharge of oil to Lower Richland Creek caused stress to the fish and the death of fish and a bird in the impacted waters.

23. Lower Richland Creek is a tributary to Lake Tillery that performs a variety of ecological functions that significantly affect the physical, chemical, and biological integrity of Lake Tillery.

24. Lake Tillery is a man-made 7.82 square mile reservoir created by the impoundment of the Pee Dee River in 1928. The Lake Tillery watershed drains approximately 4,834 square miles.

25. Lake Tillery, with public access areas, marinas, boat ramps, and boat launching lanes, accommodates fishing and boating from local residents and tourists. Lake Tillery supports fisheries for fish species.

26. Lake Tillery serves as a drinking water source for residents in the town of Norwood and Montgomery County.

27. Lake Tillery is a traditionally navigable water.

28. Lower Richland Creek, including the segment impacted by Respondent's discharge of oil, is a perennial tributary that is connected to and flows directly into Lake Tillery, a "navigable water" of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1, and therefore is subject to the jurisdiction of Section 311 of the CWA, 33 U.S.C. § 1321.

29. Respondent's February 28, 2010 discharge of oil from its Facility into and upon Lower Richland Creek and its adjoining shorelines in a harmful quantity constitutes a violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

30. As alleged in the preceding paragraphs, and pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to a maximum of \$177,500.

#### **IV. Proposed Penalty**

31. Based on the foregoing Allegations, and pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. § 19.4, Complainant proposes that the

Administrator, after considering the statutory penalty factors set forth at Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), issue a Final Order assessing a civil penalty against Respondent in an amount not to exceed \$16,000 per violation per day for each day during which the violation continued (in other words, per day of violation); except that the maximum amount shall not exceed \$177,500 for violations of Section 311(b)(3) which occurred between January 13, 2009 and December 6, 2013.

32. The violation alleged in Paragraphs 18 and 20 caused a serious environmental impact because the discharge reached Lower Richland Creek, a tributary of Lake Tillery that contributes to the biological integrity of downstream waters, including Lake Tillery, which is a drinking water source for residents in the town of Norwood and Montgomery County. The discharge caused stress to fish and the death of fish and a bird in the impacted waters. A sheen and discoloration was observed in Lower Richland Creek from February 28, 2010 to March 19, 2010. Active oil recovery activities, including the use of vacuum trucks, continued for at least five (5) days. Petroleum sorbent pads and booms were used to recover petroleum product for at least nineteen (19) days following the discharge. Additionally, approximately 2,000 tons of petroleum-impacted soils were excavated and transported off-site for disposal. Therefore, the violation alleged in Paragraphs 18 and 20 represents a serious violation of the CWA.

#### **V. Answer and Right to Request a Hearing**

33. Default constitutes an admission of all facts alleged in this Complaint and a waiver of Respondent's right to a hearing on factual allegations. In order to avoid default in this matter, Respondent must, within thirty (30) days after receipt of this Complaint, either: (1) settle

this matter with Complainant; or (2) file both an original and one copy of a written Answer to this Complaint with:

Patricia Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960

Respondent is also required, pursuant to 40 C.F.R. § 22.5(b), to provide a contemporaneous copy of any Answer to Complainant.

34. Pursuant to 40 C.F.R. § 22.15(b), Respondent's Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge, or clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. If Respondent states in its Answer that it has no knowledge of a particular factual allegation, the allegation shall be deemed denied. Respondent's Answer shall also state the circumstances or arguments for any defense Respondent wishes to assert, challenges to any factual allegation in the Complaint, and any basis Respondent may have to oppose the Complaint's proposed penalty.

35. Pursuant to 40 C.F.R. § 22.15(d), Respondent's failure to admit, deny, or explain any material factual allegation in its Answer to this Complaint constitutes an admission of the allegation.

36. Pursuant to 40 C.F.R. § 22.17(d), any penalty assessed in the Default Order shall become due and payable by Respondent without further proceedings thirty (30) days after the Default Order becomes a Final Order. Pursuant to 40 C.F.R. § 22.27(c), a Default Order will become a Final Order forty-five (45) days after its service upon Respondent and without further proceeding unless Respondent moves to reopen the hearing, appeals the initial decision to the

Environmental Appeals Board, moves to set aside a Default Order, or the Environmental Appeals Board elects to review the initial decision on its own initiative.

37. Respondent's failure to fully pay the proposed penalty, as assessed by the Final Order, by its due date may result in a civil action to collect the assessed penalty, plus interest, attorneys' fees, costs, and an additional quarterly nonpayment penalty under Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H).

38. Following receipt of Respondent's Answer, a Presiding Officer will be assigned. The Presiding Officer will notify the parties of his/her assignment, and shall notify the parties of the time and place of further proceedings in the case.

39. Pursuant to 40 C.F.R. § 22.15(c), Respondent has the right to request a hearing in its Answer to contest any material fact contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty. Even if Respondent does not explicitly request a hearing in its Answer, the Presiding Officer may hold such a hearing if Respondent's Answer raised issues appropriate for adjudication. The procedures for any such hearing and for all proceedings in this action are set out in 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint.

#### **VI. Public Notice**

40. Pursuant to Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i), Complainant is providing public notice of and a reasonable opportunity to comment on this proposed issuance of a Final Order assessing a civil penalty against Respondent. If a hearing is held on this matter, members of the public who submitted timely comments on this proceeding have the right under Section 311(b)(6)(C)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(ii), to be heard and present evidence at the hearing.

41. Pursuant to 311(b)(6)(C)(iii) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(iii), if Respondent does not request a hearing, such members of the public will have an additional thirty (30) days to petition the Administrator to set aside any Final Order assessing a civil penalty and to provide a hearing thereon. A petition to hold the hearing will be granted only if the petitioner's evidence is material and was not considered in the issuance of the Final Order assessing a civil penalty.

#### **VII. Informal Conference**

42. Respondent may request an informal conference with Complainant's representative concerning the alleged violation, the amount of the proposed penalty, and the possibility of settlement. A request for an informal conference does not extend any deadline in this proceeding, including the deadline by which Respondent must submit an Answer to this Complaint.

43. If Respondent has any questions concerning this settlement process, or wishes to arrange for an informal conference, please contact Teresa Mann, Senior Attorney, at (404) 562-9572.

#### **VIII. Service of Documents**

44. A copy of Respondent's Answer and any subsequent documents that Respondent files in this action shall be sent to the following attorney who represents Complainant in this matter and who is authorized to receive service for Complainant in the proceeding:

Teresa Mann  
Senior Attorney  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960  
Email: [mann.teresa@epa.gov](mailto:mann.teresa@epa.gov)  
Phone: (404) 562-9572



G. Alan Farmer, Director  
RCRA Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960

Date: 9-16-2014

**CERTIFICATE OF SERVICE**

I hereby certify that I have, on the date below, served the original and one true and correct copy of the foregoing Complaint, In the Matter of Curtis Transport, Inc., Docket No. CWA-04-2014-5126, on the following in the manner indicated below:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960

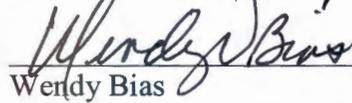
(Via Hand Delivery)

I hereby certify that I have, on the date below, served a true and correct copy of the foregoing Complaint, In the Matter of Curtis Transport, Inc., Docket No. CWA-04-2014-5126 on the following in the manner indicated below:

Mr. Dennis Curtis  
President  
Curtis Transport, Inc.  
1123 West Main Street  
Chesterfield, South Carolina 29709

(Via Certified Mail,  
Return Receipt  
Requested)

Dated this 17 day of September, 2014



Wendy Bias  
U. S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960