



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

SEP 04 2007

VIA CERTIFIED MAIL

Ms. Amy McMorrow  
Troutman Sanders LLP  
Bank of America Plaza  
600 Peachtree Street, N.E., Suite 5200  
Atlanta, Georgia 30308-2216

RE: Final Consent Agreement and Final Order for Kenan Transport, LLC  
Docket Number CWA-04-2007-5171(b)

Dear Amy:

Please find enclosed a copy of the final, file-stamped Consent Agreement memorializing the settlement reached between the U.S. Environmental Protection Agency and Kenan Transport, LLC, regarding a violation of the Clean Water Act, as amended by the Oil Pollution Act (OPA).

Thank you for your assistance and cooperation in this matter. If you have any questions, please call me at 404-562-9685.

Sincerely,

A handwritten signature in cursive script that reads "Colleen E. Michuda".

Colleen E. Michuda  
Associate Regional Counsel

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

RECEIVED  
EPA REGION IV

2007 SEP -4 PM 4: 09

HEARING CLERK

IN THE MATTER OF:

Kenan Transport, LLC  
4895 Dressler Rd.  
Canton, OH 44718

CWA SECTION 311 CLASS  
CONSENT AGREEMENT  
AND FINAL ORDER  
UNDER 40 C.F.R. § 22.13(b)

Docket No. CWA-04-2007-5171(b)

Respondent.

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 311(b)(6)(B)(i) of the Clean Water Act (“Act”), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. § 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 4, who has in turn delegated these authorities through the Director, RCRA Division, to the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division (“Complainant”).

**CONSENT AGREEMENT**

**Stipulations**

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

1. Kenan Transport, LLC (“Respondent”) is a limited liability corporation organized under the laws of Delaware with a place of business located at 4895 Dressler Rd., Canton, Ohio. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 110.1.

2. Respondent was the owner and operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 110.1, of a tractor/trailer (“the facility”) that was involved in a single vehicle rollover incident on Birmingham Airport property in Birmingham, Jefferson County, Alabama, on October 31, 2003.

3. The facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

4. Village Creek, which flows to the Locust Fork of the Warrior River, is a water body subject to the jurisdiction of Section 311 of the Act as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

5. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon 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 the environment of the United States.

6. For purposes of Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. § 110.3 to include discharges of oil that (1) violate applicable water quality standards or (2) cause a film or a 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.

7. For the purposes of this Consent Agreement, Respondent admits to EPA’s jurisdiction over the matters set out above, but neither admits nor denies the factual allegations or other legal conclusions set forth in this Agreement. Neither this Consent Agreement nor any part

thereof, nor any entry into or performance under this Order, shall constitute or be construed as an admission or acknowledgment of liability in this proceeding or any subsequent legal action. This paragraph shall not in any way negate Respondent's admission of EPA's jurisdiction over the matters set out above to the full extent required under 40 C.F.R. Part 22.

### **Allegations**

Complainant alleges, and Respondent neither admits nor denies, that:

8. On October 31, 2003, Respondent discharged 8,000 gallons of oil as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 110.1, from its facility onto the concrete ground surface on Birmingham Airport property. A portion of Respondent's October 31, 2003, discharge flowed into and through a storm water drain and storm water drainage control canal, to Village Creek and its adjoining shorelines.

9. Respondent's October 31, 2003, discharge of oil from its facility caused a film or sheen upon or discoloration of the surface of Village Creek and its adjoining shorelines, and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, in violation of Section 311(b)(3) of the Act.

10. Without admitting any liability for the release, Respondent took immediate responsive action to mitigate environmental harm and minimize environmental impact from the spill, at significant expense.

### **Waiver of Rights**

11. Solely for the purpose of this Consent Agreement, Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), to appeal any Final Order in this matter under Section 311(b)(6)(G)(i)

of the Act, 33 U.S.C. § 1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

12. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this Consent Agreement or the Final Order.

13. Nothing in this Consent Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Agreement. Except as otherwise provided herein, Complainant and Respondent each expressly reserves any and all rights, defenses, claims, demands, and causes of action which it may have with respect to any matter, transaction, or occurrence relating in any way to the facts alleged in the Consent Agreement against any person not a party hereto.

#### **Penalty**

14. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of \$10,684.

#### **Payment Terms**

Based on the forgoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

15. No later than 30 days after the effective date of the Final Order, Respondent shall pay the amount of \$10,684 by means of a cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, Respondent shall submit a cashier's or certified check,

payable to "Environmental Protection Agency," and bearing the notation "OSLTF-311." If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency  
P.O. Box 371099M  
Pittsburgh, PA 15251

If Respondent sends payment by a private delivery service, the payment shall be addressed to:

Mellon Client Service Center  
ATTN: Shift Supervisor  
Lockbox 371099M Account 9109125  
500 Ross Street  
Pittsburgh, PA 15262-0001

If paying by EFT, Respondent shall transfer \$10,684 to:

Mellon Bank  
ABA 043000261  
Account 9109125  
22 Morrow Drive  
Pittsburgh, PA 15235

In the case of an international transfer of funds, Respondent shall use SWIFT address MELNUS3P.

16. If paying by check, Respondent shall note on the penalty payment check the title and docket number of this case. Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the following people:

Ms. Patricia Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta GA 30303-8960

Mr. Doug C. McCurry, Chief  
North Enforcement and Compliance Section  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. Environmental Protection Agency  
Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta GA 30303-8960

17. Respondent's failure to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorneys' fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

**General Provisions**

18. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

19. The undersigned representative of Respondent hereby certifies that she is fully authorized to enter into the terms and conditions of this Consent Agreement and attached Final Order and to execute and legally bind Respondent to this Consent Agreement and attached Final Order.

20. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations alleged herein and facts stipulated to and/or alleged

herein. Except as otherwise set forth herein, compliance with this Consent Agreement shall resolve the allegations of violations contained herein.

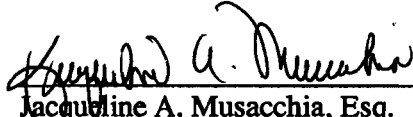
**Effective Date**

21. This Consent Agreement and Final Order is effective upon the filing of the Final Order with the Regional Hearing Clerk.

In the matter of Kenan Transport, LLC, Docket No. CWA-04-2007-5171(b):


KENAN TRANSPORT, LLC

Date: 8.10.2007

  
\_\_\_\_\_  
Jacqueline A. Musacchia, Esq.  
Vice President & General Counsel

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 8/22/07

  
\_\_\_\_\_  
Narindar Kumar  
Chief, RCRA and OPA Enforcement and  
Compliance Branch  
RCRA Division



**FINAL ORDER**

Pursuant to Section 311(b)(6) of the Act, 33 U.S .C. § 1321(b)(6), and the delegated authority of the undersigned, and in accordance with 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,” codified at 40 C.F.R. Part 22, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties and Allegations by the Complainant are adopted as Findings in this Final Order.

The Respondent is ordered to comply with the terms of the Consent Agreement.

Date: Sept 4, 2007

Susan B. Schub  
Honorable Susan Schub  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 4

CERTIFICATE OF SERVICE

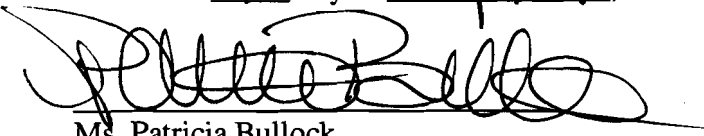
I hereby certify that I have this day served a true and correct copy of the Foregoing Consent Agreement and Final Order, in the Matter of Kenan Transport, LLC, Docket No. CWA-04-2007-5171(b), on the parties listed below in the manner indicated:

Colleen Michuda (Via EPA Internal Mail)  
Office of Environmental Accountability  
U.S. Environmental Protection Agency - Region 4  
61 Forsyth Street  
Atlanta, GA 30303

Amy P. McMorrow (Via Certified Mail,  
Troutman Sanders LLP Return Receipt Requested)  
Bank of America Plaza  
600 Peachtree St., N.E., Ste. 5200  
Atlanta, GA 30308-2216

Doug C. McCurry, Chief (Via EPA Internal Mail)  
North Enforcement and Compliance Section  
RCRA and OPA Enforcement and Compliance Branch  
U.S. Environmental Protection Agency  
Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta GA 30303-8960

Dated this 4 day of September, 2007.

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