

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

2017 JAN 24 AM 7:04  
OFFICE OF REGIONAL  
ADMINISTRATION  
HEARING CLERK

IN THE MATTER OF )

Tri Star Transport, LLC )  
1720 Ed Temple Boulevard )  
Nashville, Tennessee )

Respondent )

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

) Docket No. CWA-04-2016-5126(b)  
)

**I. LEGAL AUTHORITY**

1. 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)(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, 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 to the Director, Resource Conservation and Restoration Division (Complainant) pursuant to EPA Region 4 CWA Delegation 2-52-A.

**II. CONSENT AGREEMENT**

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this Consent Agreement and Final Order (CA/FO), and Respondent hereby agrees to comply with the terms of this CA/FO. For purposes of this CA/FO and settlement of this action, Respondent admits to the jurisdictional statements contained herein.

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### **III. STIPULATIONS**

3. Tri Star Transport, LLC (Respondent) is a limited liability company organized under the State of Tennessee, doing business in the State of Tennessee. Respondent is a “person” within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).

4. Respondent is the owner and operator within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), of a fleet of tanker trucks that deliver fuel (gasoline and diesel) and liquid asphalt throughout the southeast. On August 13, 2014, a tanker truck (Facility) owned and operated by Respondent was transporting diesel and gasoline when it was involved in a single vehicle traffic accident near the intersection of Centennial Boulevard near 61<sup>st</sup> Avenue North in Nashville, Davidson County, Tennessee. Respondent’s August 13, 2014, accident caused a discharge of gasoline and diesel fuel from its Facility at the accident location. On the same day, there was reported to be a sheen upon and discoloration of the surface of Richland Creek and its adjoining shorelines, approximately 0.6 miles from the accident location.

5. The Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

6. Richland Creek flows to the Cumberland River, which flows to the Mississippi River. Richland Creek, the Cumberland River and the Mississippi River are navigable waters as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1 and are therefore subject to the jurisdiction of Section 311 of the CWA, 33 U.S.C. § 1321.

7. Gasoline and diesel fuel constitute “oil” within the meaning of Section 311(a)(1) of the CWA, 42 U.S.C. § 1321(a)(1).

8. 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 or adjoining shorelines in such quantities that have been determined may be harmful.

9. Pursuant to Section 311(b)(4) of the CWA, 33 U.S.C. § 1321 (b)(4), the determination of the quantity of oil that may be harmful and is thereby prohibited under Section 311(b)(3), 33 U.S.C. § 1321 (b)(3), is defined at 40 C.F.R. § 110.3 to include discharges of oil that, inter alia, cause a sheen upon or discoloration of the surface of the water or adjoining shorelines.

#### **IV. ALLEGATIONS**

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

10. On August 13, 2014, Respondent discharged approximately 166 barrels of oil, as defined in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), from its Facility into or upon Richland Creek and/or its adjoining shorelines.

11. Respondent's August 13, 2014, discharge of oil caused a sheen and discoloration of the surface of Richland 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 CWA, 33 U.S.C. § 1321(b)(3).

12. Accordingly, Respondent violated Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

#### **V. WAIVER OF RIGHTS**

13. 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)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), to appeal any Final Order in this matter under Section 311(b)(6)(G)(ii) of the CWA,

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

14. Complainant reserves the right, pursuant to 40 C.F.R. § 22.45(c)(4)(iii), to withdraw from this Consent Agreement and proposed Final Order within fifteen (15) calendar days of receipt of a commenter's petition requesting, pursuant to 40 C.F.R. § 22.45(c)(4)(ii), that the Regional Administrator set aside the Consent Agreement and proposed Final Order on the basis that material evidence was not considered.

15. 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 CA/FO.

16. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq.

17. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the CWA, 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.

#### **VI. PAYMENT OF CIVIL PENALTY**

18. Respondent consents to the payment of a civil penalty of SIXTY-TWO THOUSAND TWO HUNDRED DOLLARS (\$62,200), which is to be paid within thirty (30) calendar days of the effective date of the Final Order.

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19. Payment shall be made by a corporate/cashier's or certified check, by electronic funds transfer (EFT), or on-line. If paying by check, Respondent shall submit a corporate/cashier's or certified check, payable to the "Environmental Protection Agency." The check shall bear the notation "OSLTF – 311" and Respondent shall reference the title and docket number of this case on the face of the check.

- a. If Respondent sends payment by the U.S. Postal Service, the payment shall be sent to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
Post Office Box 979077  
St. Louis, Missouri 63197-9000

- b. If Respondent sends payment by an overnight commercial delivery service such as DHL, FedEx, or UPS, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101  
(314) 481-1028

- c. If Respondent sends payment by wire transfer, the wire transfer should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
The Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency."

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- d. If Respondent elects to use the On-Line Payment Option, available through the Department of the Treasury, Respondent should go to [www.pay.gov](http://www.pay.gov) and enter "sfo 1.1" in the search field, and then open the form and complete required fields.

20. Respondent shall submit copies of each check (or, in the case of a wire transfer or on-line payment, a copy of the wire transfer or on-line confirmation) to the following people:

Patricia Bullock  
Regional Hearing Clerk  
U.S. EPA, Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960

and to:

William Joyner  
UST and PCB/OPA Enforcement and Compliance Section  
Enforcement and Compliance Branch  
Resource Conservation and Restoration Division, US EPA Region IV  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8909

21. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 26 U.S.C. § 162(f).

22. 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, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the CWA, 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.

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## VII. GENERAL PROVISIONS

23. Pursuant to Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), and 40 C.F.R. § 22.45, Complainant will provide public notice of and reasonable opportunity to comment on this Consent Agreement and proposed Final Order.

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

25. No change in ownership, partnership, corporate, or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

26. Compliance with this CA/FO resolves only Respondent's liability for federal civil penalties for the violation alleged herein.

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

28. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents the EPA in this matter and who is authorized to receive service for the EPA in this proceeding:

Roberto Busó, Esq.  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960  
Phone: (404) 562-28530  
[Buso.Roberto@epa.gov](mailto:Buso.Roberto@epa.gov)

29. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents Respondent in this matter and who is to receive service for Respondent in this proceeding:

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Scott Thomas, Esq.  
Bass, Berry & Sims PLC  
150 Third Avenue South, Suite 2800  
Nashville, TN 37201  
Phone: 615-742-6243; Fax: 615-742-2743  
SThomas@bassberry.com

30. By executing this CA/FO, Respondent certifies that all violations alleged herein, which are neither admitted nor denied, have been corrected.

**VIII. SEVERABILITY**

31. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO to any party or circumstance is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

**IV. EFFECTIVE DATE**

32. This CA/FO is effective when the Final Order is filed with the Regional Hearing Clerk.

**[SIGNATURES ON FOLLOWING PAGE]**

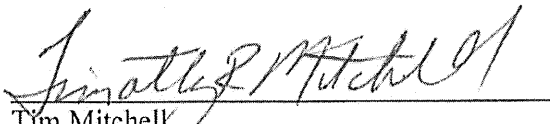
In Re: Tri Star Transport, LLC  
Docket No. CWA-04-2016-5126(b)



**IN THE MATTER OF TRI STAR TRANSPORT, LLC, DOCKET NO. CWA-04-2016-5126(B)  
CONSENTED AND AGREED TO:**

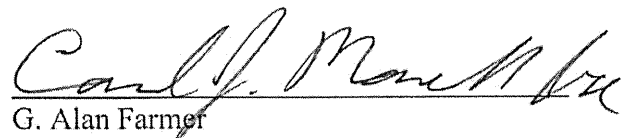
TRI STAR TRANSPORT, LLC

Date: 11-29-16

  
\_\_\_\_\_  
Tim Mitchell  
CEO

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 1/18/17

  
\_\_\_\_\_  
G. Alan Farmer  
Director  
Resource Conservation and Restoration Division

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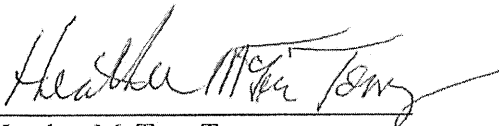
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REGION 4

IN THE MATTER OF	)	
	)	CWA SECTION 311 CLASS II
	)	CONSENT AGREEMENT AND
Tri Star Transport, LLC	)	FINAL ORDER
1720 Ed Temple Boulevard	)	UNDER 40 C.F.R. § 22.13(b)
Nashville, Tennessee	)	
	)	
Respondent	)	Docket No. CWA-04-2016-5126(b)
_____	)	

**FINAL ORDER**

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22. Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

Date: JAN 19 2017

Signature:   
Heather McTeer Toney  
Regional Administrator

**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 **Tri Star Transport, LLC, Docket No. CWA-04-2016-5126(b)** on the parties listed below in the manner indicated:

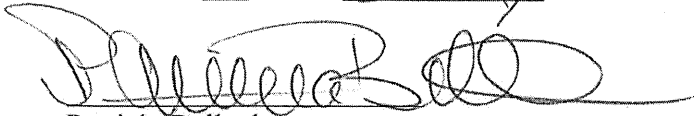
Roberto Busó (Via EPA's Electronic Mail)  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street SW  
Atlanta, Georgia 30303

Quantindra Smith (Via EPA's Electronic Mail)  
RCRA and OPA Enforcement and Compliance Branch  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street SW  
Atlanta, Georgia 30303

William Joyner (Via EPA's Electronic Mail)  
RCRA and OPA Enforcement and Compliance Branch  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street SW  
Atlanta, Georgia 30303

Scott Thomas, Esq. (Via Certified Mail)  
Bass, Berry & Sims PLC  
150 Third Avenue South, Suite 2800 •  
Nashville, TN 37201

Dated this 24 day of January, 2017

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