



REGION 9

SAN FRANCISCO, CA 94105

IN THE MATTER OF:)	Docket No. CWA-09-2024-0078
)	
CONTINENTAL TRANSPORT)	
CORPORATION)	COMPLAINT/CONSENT AGREEMENT
Nu'uuli Village, American Samoa)	AND FINAL ORDER
)	
Respondent.)	<i>Class II Administrative Penalty Proceeding under</i>
)	<i>Section 309(g) of the Clean Water Act, 33 U.S.C. §</i>
)	<i>1319(g), and 40 C.F.R. §§ 22.13(b) and 22.18</i>
_____)	

CONSENT AGREEMENT

I. AUTHORITY AND PARTIES

1. This is a Class II civil administrative penalty proceeding under section 309(g)(1)(A) and (2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(1)(A) and (2)(B), and 40 C.F.R. Part 22 (*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*).

2. Pursuant to section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against persons who violate section 301(a) of the CWA, 33 U.S.C. § 1311(a). The Administrator has delegated this authority to the Regional Administrator of the EPA Region 9, who in turn has delegated this authority to the Director of the Enforcement and Compliance Assurance Division, hereinafter "Complainant."

3. Respondent is Continental Transport Corporation, a corporation organized under the laws of American Samoa and based in Pago Pago, American Samoa.

4. This Consent Agreement and Final Order (CA/FO), which contains the elements of a complaint required by 40 C.F.R. § 22.14(a), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent by EPA and Respondent, it is hereby STIPULATED, AGREED, AND ORDERED:

II. STATUTORY AND REGULATORY FRAMEWORK

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for a person to discharge pollutants, including dredged or fill material, from a point source into waters of the United States, except as authorized by a CWA permit. Under section 404 of the CWA, 33 U.S.C. § 1344, the U.S. Army Corps of Engineers (Corps) issues permits for the discharge of dredged or fill material into waters of the United States.

6. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” to include a “corporation.”

7. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to mean, *inter alia*, “dredged spoil,” “solid waste,” “garbage,” “biological materials,” “rock,” “sand,” and “cellar dirt” discharged into water.

8. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.”

9. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States, including the territorial seas.” Section 502(8) of the CWA, 33 U.S.C. § 1362(8), defines “territorial seas” as the belt of seas measured from the line of the ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

11. Regulations codified at 33 C.F.R. § 328.3(c)(7) define “ordinary high water mark” as the “line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.”

12. Regulations codified at 33 C.F.R. § 328.3(c)(3) define “high tide line” as the “line of intersection of the land with the water’s surface at the maximum height reached by a

rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.”

13. Regulations codified at 33 C.F.R. § 323.2(e)(1) define “fill material” as “material placed in waters of the United States where the material has the effect of: (i) Replacing any portion of a water of the United States with dry land; or (ii) Changing the bottom elevation of any portion of a water of the United States.”

14. Pursuant to CWA section 309(g), 33 U.S.C. § 1319(g), and 40 C.F.R. Part 19, EPA may assess a Class II civil administrative penalty of up to \$26,685 a day up to the maximum administrative cap of \$333,552 for violations that occur after November 2, 2015, where penalties are assessed on or after December 27, 2023. (*Civil Monetary Penalty Inflation Adjustment* at 88 Fed. Reg. 89309 (December 27, 2023)).

III. GENERAL ALLEGATIONS

15. Continental Transport Corporation (Respondent), as a corporation based in and organized under the laws of American Samoa, is a “person” within the meaning of section 502(5) of the CWA, 33 U.S.C. § 1362(5).

16. Beginning on or about September 2022 and continuing at least through October 20, 2022, Respondent, as the construction contractor for the American Samoa Government, Department of Public Works (ASDPW), began construction of the Nu’uuli Village Road Shoreline Revetment Project along a portion of the eastern shoreline of Coconut Point in Nu’uuli Village, Island of Tutuila, American Samoa (Project Site).

17. As part of this project Respondent used mechanized land-clearing and earth-moving equipment to discharge rock, soil, and concrete tri-bar below the high tide line along 330 feet of coastal shoreline. The project also involved in-water work and placement of structures below the ordinary high water mark.

18. The Nu’uuli coastal waters are part of the territorial seas of the Pacific Ocean and therefore “waters of the United States” within the meaning of CWA § 502(7) and (8), 33 U.S.C. § 1362(7) and (8).

19. The heavy machinery described above is a “point source” within the meaning of CWA section 502(14), 33 U.S.C. § 1362(14).

20. The rock, soil, concrete tri-bar and/or concrete that Respondent discharged all constitute “fill material” and are each a “pollutant” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

21. Respondent’s discharge of “fill material,” into waters of the United States constitutes a “discharge of pollutants” within the meaning of CWA section 502(12), 33 U.S.C. § 1362(12).

IV. ALLEGED VIOLATION

22. As a result of the alleged activity at the Project Site on or about September 2022 and at least through October 2022, Respondent discharged or caused to be discharged fill material into waters of the United States without authorization under section 404 of the CWA, 33 U.S.C. § 1344, in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

V. ADMINISTRATIVE PENALTY

23. In consideration of the penalty factors of section 309(g) of the CWA, 33 U.S.C. § 1319, Respondent agrees to pay a civil penalty in the amount of **Twenty-Six Thousand dollars (\$26,000.00)** (Assessed Penalty) within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk. (Filing Date or Effective Date).

24. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

25. When making a payment, Respondent shall:

- a. Identify every payment with Respondent’s name and docket number on this Agreement: Docket No. CWA-09-2024-0078.
- b. Concurrently, with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following persons:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 9

75 Hawthorne Street
San Francisco, California 94105
r9HearingClerk@epa.gov

Andrew Zellinger
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, California 94105
zellinger.andrew@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to: CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

26. **Interest, Charges, and Penalties on Late Payments.** Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.

- a. **Interest.** Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS standard underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.
- b. **Handling Charges.** Respondent will be assessed monthly a charge to cover EPA’s costs of processing and handling overdue debts. If Respondent fails to pay the

Assessed Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.

- c. **Late Payment Penalty.** A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Filing Date.

27. **Late Penalty Actions.** In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

28. **Allocation of Payments.** Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

29. **Tax Treatment of Penalties.** Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

VI. APPLICABILITY

30. This CA/FO shall apply to and be binding on Respondent, Respondent's officers, directors, partners, agents, employees, contractors, successors, and assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondent's obligations under this CA/FO.

VII. RESPONDENT'S ADMISSIONS AND WAIVERS

31. In accordance with 40 C.F.R. § 22.18(b), solely for the purpose of this proceeding, Respondent: (a) admits the jurisdictional allegations of the complaint; (b) neither admits nor denies the specific factual allegations contained in this Consent Agreement; (c) consents to all conditions specified in this CA/FO and to the assessment of the civil administrative penalty set forth in Section V above; and (d) waives any right to contest the allegations set forth in this CA/FO. Respondent also waives the right to a hearing under section 309(g)(2)(B) of the CWA, 33 U.S.C. §§ 1319(g)(2)(B), and to any appeal of the Final Order in this matter under section 309(g)(8)(B) of the CWA.

VIII. RESERVATION OF RIGHTS

32. In accordance with 40 C.F.R. § 22.18(c), full payment of the penalty set forth in this CA/FO only resolves Respondent's CWA civil penalty liabilities for the violations specifically alleged herein and does not in any case affect the right of the EPA to pursue appropriate injunctive relief or other equitable relief or criminal sanction for any violations of law.

33. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations, and shall in no way relieve or affect Respondent's obligations under any applicable federal, state, or local laws, regulations, or permits. Nothing in this CA/FO shall limit the ability of the Corps to issue, modify, suspend, revoke, or deny any individual permit or any nationwide or regional general permit pursuant to CWA section 404, 33 U.S.C. § 1344.

IX. ATTORNEY FEES AND COSTS

34. Unless otherwise specified, each party shall bear its own attorney fees and costs.

X. EFFECTIVE DATE AND TERMINATION

35. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall take effect on the date that the Final Order, having been signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk (the Effective Date or the Filing Date), and shall terminate when Respondent has complied with this CA/FO in full.

XI. PUBLIC NOTICE

36. Pursuant to CWA section 309(g)(4), 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order. Complainant reserves the right to withhold or withdraw consent to this Consent Agreement if public comments disclose relevant and material information that was not considered by Complainant in entering into this Consent Agreement. Respondent may withdraw from this Consent Agreement only upon receipt of written notice from EPA that it no longer supports entry of this Consent Agreement.

37. Pursuant to section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA has consulted with the State of California regarding this penalty action.

For Complainant the U.S. Environmental Protection Agency, Region 9

 /s/ August 29, 2024

Amy C. Miller-Bowen, Director
Enforcement and Compliance Assurance Division

Of Counsel:
Sara Goldsmith
Attorney-Advisor
Office of Regional Counsel

For Respondent Continental Transport Corporation

_____/s/_____
Tony Togia'i, CEO of Continental

_____August 19, 2024_____
Date

FINAL ORDER

It is Hereby Ordered that this Consent Agreement and Final Order (U.S. EPA Docket No. CWA-09-2024-0078) be entered, and that Respondent shall pay a civil penalty in the amount of twenty-six thousand dollars (\$26,000) in accordance with the terms of this Consent Agreement and Final Order.

Steven L. Jawgiel
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the original of the foregoing Complaint/Consent Agreement and Final Order in the matter of CONTINENTAL TRANSPORT CORPORATION (CWA-09-2024-0078) has been filed with the Regional Hearing Clerk, and a copy was served on Respondent and Counsel for Complainant by email, as indicated below:

COMPLAINANT:

Sara Goldsmith
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, California 94105
Email: goldsmith.sara@epa.gov

RESPONDENT:

Tony Togia'i, CEO
Continental Transport Corporation
P.O. Box 937
Pago Pago, American Samoa 96799
Email: tony@ctcpago.com

Regional Hearing Clerk
U.S. EPA Region 9