

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:20-cv-2311

UNITED STATES OF AMERICA

Plaintiff,

v.

GROENDYKE TRANSPORT INC.,

Defendant.

CONSENT DECREE

I. BACKGROUND

Plaintiff United States of America (United States), by the Attorney General, on behalf of the United States Environmental Protection Agency (EPA), has filed a complaint in this action concurrently with this Consent Decree alleging that Groendyke Transport Inc. (Groendyke), as the legal successor of Manweiler Transport Company (Manweiler), has violated the Clean Water Act pursuant to Sections 311(b)(3) of the Clean Water Act, 33 U.S.C. § 1321(b)(3).

The Complaint against Groendyke (Defendant) alleges that on August 26, 2016, a tanker truck operated by Manweiler took a turn too fast in the 900 block of Motor City Drive in Colorado Springs, Colorado, overturned and subsequently spilled approximately 190 barrels (8,000 gallons) of diesel and gasoline into or upon navigable waters of the United States and their adjoining shorelines. 33 U.S.C. § 1321(b)(3). The unauthorized discharge from the tanker truck, after it crashed, went into a storm drain that flows to Bear Creek and then to Fountain Creek, a perennial water that flows into the Arkansas River, an interstate water. The Complaint

seeks civil penalties from Groendyke pursuant to Section 311(b)(7) of the Act, 33 § U.S.C. 1321(b)(7), for the unauthorized discharge.

Groendyke is an Oklahoma corporation that owns and operates a tanker truck transport business that transports petroleum and other products. Groendyke purchased Manweiler, which was engaged in similar business, in January 2017, a few months after the unauthorized discharge that is the subject of this action. Groendyke does not contest that it is the legal successor to Manweiler. Groendyke also does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and the Parties, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 309(b) and 311(b)(3) of the Clean Water Act, 33 U.S.C. §§ 1319(b) and 1321(b)(3).

2. Venue lies in this District pursuant to the Clean Water Act Sections 309(b) and 311(b)(7)(E), 33 U.S.C. §§ 1319(b) and 1321 (b)(7)(E), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the violation alleged in the Complaint is alleged to have occurred in, and Defendant conducts business in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, Groendyke consents to the Court's jurisdiction over this Decree and any such action and over it, and consents to venue in this judicial district.

3. For purposes of this Consent Decree, Groendyke agrees that the Complaint states claims upon which relief may be granted pursuant to the Clean Water Act.

II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States and upon Groendyke and any successors, assigns, or other entities or persons otherwise bound by law.

5. Any change in ownership or corporate status of Groendyke, including but not limited to, any transfer of assets or real or personal property, shall in no way alter Groendyke's or its successors' and assigns' rights or responsibilities under this Consent Decree.

III. DEFINITIONS

6. Terms used in this Consent Decree that are defined in the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, shall have the meaning assigned to them in that Act. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

“Complaint” shall mean the complaint filed by the United States in this action;

“Consent Decree” or “Decree” shall mean this Decree;

“Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

“Defendant” shall mean Groendyke Transport Inc.;

“EPA” shall mean the United States Environmental Protection Agency;

“Effective Date” shall have the definition provided in Section X.

“Paragraph” shall mean a portion of this Decree identified by an arabic numeral;

“Parties” shall mean the United States and Groendyke;

“Section” shall mean a portion of this Decree identified by a roman numeral;

“United States” shall mean the United States of America, on behalf of EPA referring the claim settled.

IV. CIVIL PENALTY

7. Within thirty (30) Days after the Effective Date, Defendant shall pay to the United States \$225,000 as a civil penalty.

8. Payment to the United States by Groendyke shall be made by FedWire Electronic Funds Transfer (EFT) to the U.S. Department of Justice (DOJ) in accordance with written instructions to be provided to Groendyke by the Financial Litigation Unit (FLU) of the United States Attorney’s Office for the District of Colorado. Such monies are to be deposited in the Oil Spill Liability Trust Fund. The payment shall reference the Civil Action Number assigned to this case and DOJ No. 90-5-1-1-12121 and shall specify that the payment is being made toward CWA civil penalties to be deposited into the Oil Spill Liability Trust Fund pursuant to 33 U.S.C. § 1321(s) and 26 U.S.C. § 9509(b)(8).

9. Groendyke shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalties owed pursuant to the Consent Decree in this case and shall reference the Civil Action Number assigned to this case and the DOJ No. 90-5-1-1-12121, to EPA and the DOJ at the addresses listed in Section X (Notices). At the time of payment, Groendyke also shall send notice that payment has been made: (1) to EPA via email at cinwd_acctsreceivable@epa.gov or

via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; and (2) to DOJ via email or regular mail in accordance with Section X (Notices). Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree and shall reference the Civil Action Number assigned to this case and DOJ Case No. 90-5-1-1-12121.

10. In addition to the stipulated penalties set forth in Section VI (Stipulated Penalties), in the event Groendyke fails to make payments of any amounts required under this Consent Decree, including stipulated penalties, it shall pay interest on the unpaid balance at the rate specified in 28 U.S.C. § 1961. The interest shall be calculated from the first day following the final due date for these payments until the entire outstanding balance has been received.

11. Defendant shall not deduct any penalties paid under this Consent Decree pursuant to this Section or Section VI (Stipulated Penalties) in calculating its federal income tax.

V. STIPULATED PENALTIES

12. Groendyke shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below. A violation includes failure to perform any obligation required by the terms of this Consent Decree, according to all applicable requirements of this Consent Decree, and within the specified time schedules established by or approved under this Decree.

13. If Groendyke fails to pay the civil penalty required to be paid under Section V (Civil Penalty) when due, it shall pay a stipulated penalty of one thousand dollars (\$1,000) per Day for each Day that the payment is late.

14. Except as provided in Paragraph 16 (a.) - (c.), stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases.

15. Groendyke shall pay any stipulated penalty within thirty (30) Days of receiving the United States' written demand.

16. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

17. Stipulated penalties shall continue to accrue as provided in Paragraph 13, during any Dispute Resolution, but need not be paid until the following:

(a) If the dispute is resolved by agreement of the Parties or by a decision of EPA that is not appealed to the Court, Groendyke shall pay accrued penalties determined to be owing, together with interest, to the United States within thirty (30) Days of the effective date of the agreement or the receipt of EPA's decision or order.

(b) If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in subparagraph (c.), below.

(c) If any Party appeals the District Court's decision, Groendyke shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

18. Groendyke shall pay stipulated penalties owing to the United States in the manner set forth in Paragraph 8, including confirmation notices as set forth in Paragraph 9, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

19. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any remedy otherwise provided by law for Groendyke's failure to pay any stipulated penalties.

20. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section VIII (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for Defendant's violation of this Consent Decree or applicable law, including but not limited to an action against Groendyke for statutory penalties. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

VI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

21. Entry of this Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging of this Consent Decree. In consideration of the payment of the civil penalty as set forth in Section V (Civil Penalty), Plaintiff hereby covenants not to sue or take administrative action against Groendyke pursuant to the Act for the civil violations alleged in the Plaintiff's Complaint through the date of lodging of this Consent Decree. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be

construed to limit the rights of the United States to obtain penalties or injunctive relief under the Clean Water Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified herein.

22. Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved by this Consent Decree.

23. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Groendyke is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Groendyke's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Groendyke's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, or with any other provisions of federal, State, or local laws, regulations, or permits.

24. This Consent Decree does not limit or affect the rights of Groendyke or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Groendyke, except as otherwise provided by law.

25. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

VII. COSTS

26. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Groendyke.

VIII. NOTICES

27. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States by email: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-1-1-12121

As to the United States by mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-1-1-12121

As to EPA: Dennis Jaramillo
Enforcement and Compliance Assurance Division
Mail code: 8 ENF-RO-O
US EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202

As to Defendant: Troy A. Robertson
Senior Vice President and General Counsel
Groendyke Transport, Inc.
Enid, Oklahoma 73701

As to Defendant by email: trobertson@groendyke.com
with cc to: rbaron@fbmjlaw.com

28. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

29. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

IX. EFFECTIVE DATE

30. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

X. RETENTION OF JURISDICTION

31. The Court shall retain jurisdiction over this case until termination of this Consent Decree.

XI. MODIFICATION

32. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

33. Any Party seeking the modification of this Consent Decree bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XII. TERMINATION

34. After Groendyke has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Groendyke may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

35. Following receipt by the United States of Groendyke's Request for Termination, the Parties shall confer informally concerning the request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree.

XIII. PUBLIC PARTICIPATION

36. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent

Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate.

37. Groendyke consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless the United States has notified Groendyke in writing that it no longer supports entry of the Consent Decree.

XIV. SIGNATORIES/SERVICE

38. Each undersigned representative of Groendyke Transport Inc. and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

39. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XV. INTEGRATION

40. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the

settlement embodied herein. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XVI. FINAL JUDGMENT

41. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Groendyke.

42. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

Dated and entered this __ day of _____, 20__

UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES OF AMERICA:

August 5, 2020
Date

/s/ Nathaniel Douglas
Nathaniel Douglas
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

August 5, 2020
Date

/s/ Heidi Hoffman
Heidi Hoffman
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Denver, CO 80202

FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY:

s/ Kenneth C. Schefski
Kenneth C. Schefski
Regional Counsel
U.S. Environmental Protection Agency, Region 8
Denver, CO 80202

s/ Marc D. Weiner
Marc D. Weiner
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 8
Office of Regional Counsel
Denver, CO 80202

FOR GROENDYKE TRANSPORT INC.:

August 5, 2020
Date

/s/Gregory R. Hodgen
Gregory R. Hodgen
President and C.E.O.
Groendyke Transport, Inc.
Enid, OK 73701