

FORELAND TRANSPORTATION
Settlement Agreement, Docket No. I11-09

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF FORELAND TRANSPORTATION, 2561 South 1560 West Suite 200 Woods Cross, Utah 84087	DOCKET NUMBER I11-09 SETTLEMENT AGREEMENT
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This **SETTLEMENT AGREEMENT** (hereinafter "**AGREEMENT**") is between **FORELAND TRANSPORTATION** (hereinafter "**OPERATOR**") and the **DIRECTOR OF THE DIVISION OF WATER QUALITY** (hereinafter the "**DIRECTOR**"), concerning violations of the *Utah Water Quality Act* (the *Act*), *Utah Code Annotated*, and the *Utah Administrative Code*.

1. The **DIRECTOR** has authority to administer the *Utah Water Quality Act, as amended 1953*, (hereinafter the "**ACT**").
2. The **UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ)** has been delegated authority by the U.S. Environmental Protection Agency (EPA) to administer the *National Pollutant Discharge Elimination System (NPDES)* permit program under the *Federal Clean Water Act (CWA)*.
3. The parties now desire to resolve this matter fully without further administrative proceedings except to the extent provided herein by entering into this **AGREEMENT**. Entering into this **AGREEMENT** is not an admission of liability or factual allegation set out in the **NOTICE**, nor is it an admission of or an agreement to any disputed facts or disputed legal theories, nor is it an admission of any violation of any law, rule, regulation or permit by the **OPERATOR**.
4. The **DIRECTOR** will administer the terms and provisions of this **AGREEMENT**.
5. This **AGREEMENT** resolves the **NOTICE OF VIOLATION** and **ORDER**, Docket Number M11-08 (hereinafter the "**NOTICE**"), between the **OPERATOR** and the **UTAH WATER QUALITY (BOARD)**, issued to the **OPERATOR** on October 4, 2011, by the **BOARD**. It does not in any way relieve the **OPERATOR** from any other obligation imposed under the Act or any other State or Federal laws.
6. In resolution of said **NOTICE** referenced in Paragraph 5 of this **AGREEMENT**, the **OPERATOR** agrees to;
 - a. Pay a total penalty amount of \$17,700.00 within 30 days of the effective date of this **AGREEMENT** by check made payable to the State of Utah.

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- b. Submit to the **DIRECTOR** for his approval, a report detailing efforts to prove the integrity of the disposal line and insure the integrity of the line.

The penalty has been determined using the *Penalty Criteria for Civil Settlement Negotiations, Utah Administrative Code ("UAC") R317-1-9* which considers such factors as the nature, severity and extent of the violations, history of noncompliance, degree of willfulness and/or negligence, good faith efforts to comply, and economic benefit. Submittals required under this **AGREEMENT** shall be delivered or mailed to the Division of Water Quality, Department of Environmental Quality, 195 North 1950 West, P.O. Box 144870, Salt Lake City, Utah 84114-4870.

7. Nothing contained in this **AGREEMENT** shall preclude the **DIRECTOR** from taking additional actions to include additional penalties against the **OPERATOR** for permit violations not resolved by this **AGREEMENT**.
8. If an agreement between the **OPERATOR** and the **DIRECTOR** cannot be reached in a dispute arising under any provision of this **AGREEMENT**, then the **OPERATOR** or the **DIRECTOR** may commence a proceeding with the **SEQ** under the *Administrative Procedures Act* to resolve the dispute. A final decision in any adjudicative proceeding shall be subject to judicial review under applicable state law.
9. Nothing in this **AGREEMENT** shall constitute a waiver by the **OPERATOR** to raise in defense any legal or factual contention for future allegations of noncompliance.
10. Nothing in this **AGREEMENT** shall constitute or be considered as a release from any claims, to include natural resource damage claims, cause of action, or demand in law or equity which the **STATE** may have against the **OPERATOR**, or any other person, firm, partnership or corporation for any liability arising out of or relating in any way to the release of pollutants to waters of the State.

AGREED to this ____ day of _____, 2013.

FORELAND TRANSPORTATION

**UTAH DIVISION of WATER
QUALITY**

By _____
Authorized Agent

By _____
Director

**ADMINISTRATIVE PENALTY DISCUSSION PURSUANT TO THE NOV ISSUED FOR,
FORELAND TRANSPORTATION,
SETTLEMENT AGREEMENT, DOCKET NO. SAI11-09**

Infractions of the Utah Water Quality Act are penalized up to \$10,000/day/violation for civil penalties (\$25,000/day/violation for criminal) according to guidelines established in the penalty policy (*Utah Administrative Code R317-1-8*).

The principles that apply in the penalty policy are:

- 1) Penalties should be based on the nature and extent of the violation
- 2) Penalties should at a minimum, recover the economic benefit of noncompliance;
- 3) Penalties should be large enough to deter noncompliance;
- 4) Penalties should be consistent in an effort to provide fair and equitable treatment of the regulated community.

To determine a civil penalty the State will consider:

- 1) the magnitude of the violations;
- 2) the degree of actual environmental harm or the potential for such harm created by the violations;
- 3) response and/or investigative costs incurred by the State or others;
- 4) any economic advantage the violator may have gained through noncompliance;
- 5) recidivism of the violator
- 6) good faith efforts of the violator
- 7) ability of the violator to pay;
- 8) the possible deterrent effect of a penalty to prevent future violations.

In the case of negotiated adjustments to penalties, arguments must be based on the considerations above.

Civil penalties for settlement purposes should be calculated based on the following formula:

CIVIL PENALTY = PENALTY + ADJUSTMENTS - ECONOMIC AND LEGAL CONSIDERATIONS

Penalties are grouped in four main categories:

- A. \$7,000 to \$10,000 per day. Violations with high impact on public health and the environment.
- B. \$2,000 to \$7,000 per day. Major violations of the Utah Water Quality Act, associated regulations, permits or orders.
- C. \$500 to \$2,000 per day. Significant violations of the Utah Water Quality Act, associated regulations, permits or orders.
- D. Up to \$500 per day. Minor violations of the Utah Water Quality Act, regulations, permits or orders.

Penalties are established within the penalty ranges shown above, based on the following criteria:

- History of compliance or non-compliance,
- Degree of willfulness or negligence, and
- Good faith efforts to comply.

Adjustments to the civil penalty include:

- The economic benefit gained as a result of non-compliance,
- Investigative costs incurred by the State and/or other governmental level,
- Documented monetary costs associated with environmental damage.

PENALTY - The penalty for FORELAND TRANSPORTATION has been calculated as follows:

Gravity Component:

The gravity component of the penalty is based on violations of the Utah Clean water Act.

On September 15, 2011, a truck transporting crude for Foreland Transportation (Foreland) on Highway 191 failed to negotiate a curve, went off the road and rolled into Willow Creek. The accident occurred between Emma Park and the Carbon Power Plant on US-191 along Willow Creek. The crude oil caught fire as a result of the accident. A less flammable component of the crude was released into Willow Creek.

By 15:00 hours on the 15th, the accident had been reported to the National Response Center and Department of Environmental Quality. David Ariotti, DEQ District Engineer, responded to the accident site to investigate the release. He observed paraffin wax on the creek below the accident site, but did not find any evidence of oil three miles downstream. By September 19th, Mr. Ariotti was better able to assess the stream. The channel was impacted with paraffin wax for approximately three miles below the accident site. The wax was deposited in pools, grasses, undercuts, rocks etc. along the channel.

Environmental contractors started the assessment and cleanup process. Early work by the contractor was focused on hand removal of material at the accident site, and removal of the vehicle. By September 19, they estimated two more weeks of work to finish the preliminary cleanup. The initial site had the last of the debris removed on September 27. Final removal of all booms from the creek occurred on November 5th.

Approximately 300 barrels of crude oil, in transport from the Uinta Basin, was involved in the incident, with an unknown amount consumed in the fire. According to Foreland, the crude was 42% heavy portion (wax). That equates to about 30,000 to 40,000 lbs. The pour point for this crude is 101 deg. F as a result of the high wax content of the oil. As soon as the temperature drops below that point, the oil begins to harden. Below 70 deg. F it behaves like shoe polish or wax. During the fire, any of the lighter portions that were exposed to air burned. The heavy portion settled to the bottom of the tank, dropped out to the ground or water. Any of the oil that dropped to the creek was either burning, or stiffening up. This limited the availability of oil to disperse through the water column or impact sediments. When the fire burned out, most of the trailer and tanks had melted down to small chunks.

The wax portion of the oil that dropped out to the creek was hardened by the lower temperature of the creek. Much of which formed balls and were caught in slow portion of the current of the creek. These were very easily removed from the creek. The DWQ toxicologist agreed that exposure to the wax portion is low risk and the likelihood of toxic effects and impacts in minimal. There were no reports of sheening or biological impacts downstream of the release which supports the belief that the toxic impact from the release was minimal.

Foreland responded to the accident immediately, and has made an effort to completely remediate the site. Foreland initiated inspections and monitoring after the 2012 spring runoff. When taken into consideration, Foreland will be given 75% credit for "good faith efforts to comply" in the penalty calculation.

Foreland contracts with many drivers, who own and operate their own trucks, but haul Forelands trailers and oil for them. Foreland works to bring all of the trucks that haul for them under their liability insurance to protect the shipment and environment in case of accident. This shipment was hauled by one of the contract drivers. It was determined by the Utah Highway Patrol that the truck and trailers were going faster than the posted speed for the road when the accident occurred. The drivers' family informed Foreland after the accident that the driver had a previously undisclosed health condition which might also have contributed to the accident, and he may have passed away before the truck lost control and left the road. Foreland will be given 75% credit for "degree of negligence" in the penalty calculation.

This was the first incident involving Foreland. They have been problem free operators. Foreland will be given 90% credit for "history of compliance or non-compliance" in the penalty calculation.

VIOLATION 1, Utah Code Ann. § 19-5-107(1)(a), for the unpermitted release of a pollutant (crude oil) from a truck, and introduction of the pollutant into Willow Creek, a tributary of the Price River, as described in Findings of Fact Sections 1 through 3.

VIOLATION 2, Utah Administrative Code R317-2-7.2, for the release of a waste or a substance (crude oil) into Willow Creek in such a way as it did or may have become offensive, as described in Findings of Fact Sections 1 through 3.

VIOLATION 3, Utah Administrative Code R317-2-7.1, for the release of crude oil from the truck and introduction of crude oil into a tributary of Willow Creek, thereby causing a violation of water quality standards and interference with the designated uses of said waters, as described in Findings of Fact Sections 1 through 3.

For the purpose of calculating a penalty for this Settlement Agreement the three violations will be combined into one, single violation. Typically, this type of violation is classified as a Category B, with it being elevated to an A, or downgraded to a C depending on the potential impact of the release on human health and the environment. After considering the fact of the release, it has been determined that the incident doesn't warrant being elevated to a Category A, and thus will be classified as a Category B violation. However, for the majority of the cleanup response period the toxic source had been eliminated and little to no cleanup activity was being done along the creek. During this time frame, with no source activity the violation does warrant being reduced from a Category B violation.

The truck and trailer caught fire as a result of the accident and burned for several hours until the fuel source for the fire was consumed. This fire is felt to have consumed most if not all of the light portion of the oil in the trailer. Containment measures such as booms and underflow weirs were being installed by the day after the accident. As a result of the nature of the material, the fire and the cleanup activities, the release warrants the violation being reduced to a Category C violation starting September 17th.

The date of September 27th, 2011 was the last day that material and debris was removed from the crash site. From that day until the booms were removed on November 5, 2011 the cleanup activity was reduced to monitoring and surveillance of the river and site reclamation activities, with little to no material being recovered. This portion of the violation will be downgraded to a Category D violation, and the penalty adjusted accordingly.

The incident started on September 15th. This will be the start date for calculating the penalty. The violation ends on November 5th, which comes to 49 days of violations. With the above explained change dates of September 17th and September 27th there are two days of violations at a Category B level, ten days at the Category C level and 37 days at a Category D level.

Economic Benefit Justification:

Economic benefit (BEN) received for VIOLATOR would be calculated based on; 1. Capital investment delayed; 2. Delayed expenditures and; 3. Expenses not incurred. Avoided and delayed expenses would be estimated based on a survey of current market, engineering and product costs.

- Capital Investment: This part of the calculation includes pollution items that were not bought to avoid the discharge such as silt fencing, gravel socks, etc.
- Expenditures: This part of the calculation includes costs of items such as inspections, monitoring, and record keeping set up that were delayed.
- O & M Costs: Avoided operation and maintenance costs were used in the economic benefit calculation.

It was determined by the Utah Highway Patrol that the truck and trailers were going faster than the posted speed for the road when the accident occurred. The accident was not traced to any mechanical failure of the truck. This supports a supports the decision that a BEN calculation does not fully fit in this situation and will not be run.

UPDES PENALTY CALCULATION SHEET

LEGAL NAME AND MAILING ADDRESS OF OPERATOR		UPDES Permit Number		FACILITY DESCRIPTION / CONTACT NAMES				
Foreland Refinery Corporation 2561 South 1560 West Suite 200 Woods Cross, Utah 84087		Date of Analysis	1/25/2011	Name of Site Contact:				
		Site Name:	Foreland Refinery	Name of Authorized Official:				
		NOV/SA Docket No.	111-09	Telephone Number				
		DEQ Analyst Name	Daniel griffin					
PERMIT COVERAGE	Category of Violation Enter Max \$ Per Day	Credit for Degree of Negligence	Credit for History of Compliance	Credit for Good Faith Efforts	Total Penalty Per Day	No. of Violation Days	Dollar Amount	Total
Category A	\$7,000-\$10,000	75%	90%	75%	\$7,600	0	\$0	\$0
	Reduction	-\$750	-\$900	-\$750				
Category B	\$2,000-\$7,000	75%	90%	75%	\$3,000	2	\$6,000	\$6,000
	Reduction	-\$1,250	-\$1,500	-\$1,250				
Category C	\$500-\$2,000	75%	90%	75%	\$800	10	\$8,000	\$8,000
	Reduction	-\$375	-\$450	-\$375				
Category D	\$0-\$500	75%	90%	75%	\$100	37	\$3,700	\$3,700
	Reduction	-\$125	-\$150	-\$125				
							Total Gravity:	\$17,700
Economic Benefit	Enter Capital Investment Cost (Delayed Capitol)	Enter Expenditures (Delayed)	Enter Annual O & M Costs (Avoided)	Enter Date Noncompliance Began	Enter Compliance Date			
(Enter Numbers From BEN worksheet)						Total BEN:	\$0	
							Total Penalty:	\$17,700