



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9
75 HAWTHORNE STREET, SAN FRANCISCO, CALIFORNIA 94105
EXPEDITED SPCC SETTLEMENT AGREEMENT**

DOCKET NO.: SPCC-09-2008-0023

On: July 14, 2008

At: 8001 Binford Rd.
Novato, CA 94945

Owned & Operated by: Cagwin & Dorward Landscape Contractors (Respondent)

An authorized representative of the United States Environmental Protection Agency ("EPA") conducted an inspection to determine compliance with the Oil Pollution Prevention ("SPCC") regulations promulgated at 40 CFR Part 112 under Section 311(j) of the Clean Water Act, 33 U.S.C. § 1321(j), (the "Act"), and found that Respondent had failed to comply with the SPCC regulations as noted on the attached SPCC INSPECTION FINDINGS, ALLEGED VIOLATIONS AND PROPOSED PENALTY FORM ("Form"), which is hereby incorporated by reference. By its first signature below, EPA ratifies the Inspection findings and Alleged Violations set forth in the Form.

EPA finds the Respondent is subject to the SPCC regulations and has violated the SPCC regulations as further described in the Form. The Respondent admits to being subject to 40 CFR § 112 and that EPA has jurisdiction over the Respondent and the Respondent's conduct as described in the Form. Respondent does not contest the Inspection Findings, and waives any objections Respondent may have to EPA's jurisdiction.

EPA is authorized to enter into this Expedited Settlement under the authority vested in the Administrator of EPA by Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990, and by 40 CFR § 22.13(b). The parties enter into this Expedited Settlement in order to settle the civil violations described in the Form for a penalty of \$1800.00. The Respondent consents to the assessment of this penalty.

This Expedited Settlement also is subject to the following terms and conditions: Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the violations have been corrected and Respondent has sent a certified check in the amount of \$1800.00, payable to the "Treasurer, United States of America" with the notation "Spill Fund - 311" and the Docket Number stated above.

This Expedited Settlement must be returned by certified mail to: OPA Enforcement Coordinator, U.S. Environmental Protection Agency, Region 9 (SFD-9-4), 75 Hawthorne Street, San Francisco, California 94105-3901. The certified check for payment must be sent by certified mail to: U. S. Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, P.O. Box 979077, St. Louis, MO 63197-9000.

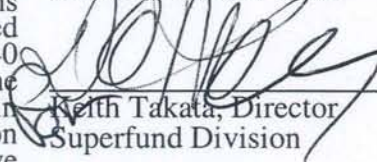
After this Expedited Settlement becomes effective, EPA will take no further action against the Respondent for the

violations of the SPCC regulations described in the Form. However, EPA does not waive any rights to take any enforcement action for any other past, present, or future violations by the Respondent of the SPCC regulations or of any other federal statute or regulations.

Upon signing and returning this Expedited Settlement to EPA, Respondent waives the opportunity for a hearing or appeal pursuant to Section 311 of the Act, and consents to EPA's approval of the Expedited Settlement without further notice.

This Expedited Settlement is binding on the parties signing below, and is effective immediately on the date filed with the Regional Hearing Clerk. If Respondent does not sign and return this Expedited Settlement as presented within 30 days of the date of its receipt, the proposed Expedited Settlement is withdrawn without prejudice to EPA's ability to file any other enforcement action for the noncompliance identified in the Form.

APPROVED BY EPA:

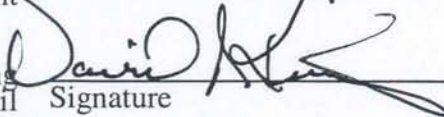

Keith Takata, Director
Superfund Division

Date: 9 September 2008

APPROVED BY RESPONDENT:

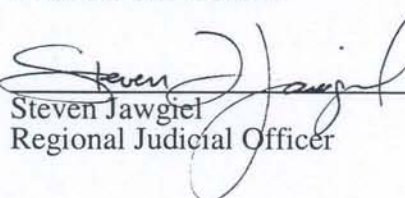
Name (print): David H. Keeney

Title (print): Shop Manager


Signature

Date: 8-28-08

IT IS SO ORDERED:


Steven Jawgiel
Regional Judicial Officer

Date: 09/09/08

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING CLERK
2008 SEP 10 AM 8:09
FILED

Spill Prevention Control and Countermeasure Inspection Findings, Alleged Violations, and Proposed Penalty Form

(Note: Do not use this form if there is no secondary containment)

These Findings, Alleged Violations and Penalties are issued by EPA Region 9 under the authority vested in the Administrator of EPA by Section 311(b)(6)(B)(I) of the Clean Water Act, as amended by the Oil Pollution Act of 1990.

Company Name <input style="width: 95%;" type="text" value="Cagwin & Dorward Landscape Contractors"/>	Docket Number: <input style="width: 95%;" type="text" value="SPCC-09-2008-0023"/>
Facility Name <input style="width: 95%;" type="text" value="Cagwin & Dorward Landscape Contractors"/>	Date <input style="width: 95%;" type="text" value="7/14/08"/>
Address <input style="width: 95%;" type="text" value="8001 Binford Rd."/>	Inspection Number <input style="width: 95%;" type="text" value="08-4050"/>
City: <input style="width: 95%;" type="text" value="Novato"/>	Inspector: <input style="width: 95%;" type="text" value="Elizabeth Sablad"/>
State: Zip Code: <input style="width: 30%;" type="text" value="CA"/> <input style="width: 60%;" type="text" value="94945"/>	EPA Approving Official: <input style="width: 95%;" type="text" value="Keith Takata"/>
Contact: <input style="width: 95%;" type="text" value="Dave Keeney
Shop Resource Manager"/>	Enforcement Contacts: <input style="width: 95%;" type="text" value="Mark Samolis Phone 415-947-4273"/>



Summary of Inspection Findings (Bulk Storage Facilities)

GENERAL TOPICS: 112.3(a), (d), (e); 112.5(a), (b), (c); 112.7 (a), (b), (c), (d)
(When the SPCC Plan review penalty exceeds \$1,000.00 enter only the minimum allowable of \$1,000.00.)

- | | | |
|-------------------------------------|---|------------|
| <input checked="" type="checkbox"/> | No Spill Prevention Control and Countermeasure Plan- 112.3 | \$1,000.00 |
| <input type="checkbox"/> | Plan not certified by a professional engineer- 112.3(d) | 400.00 |
| <input type="checkbox"/> | No management approval of plan- 112.7 | 300.00 |
| <input type="checkbox"/> | Plan not maintained on site (applies if facility is manned at least four (4) hours per day)- 112.3(e)(1) | 100.00 |
| <input type="checkbox"/> | Plan not available for review- 112.3(e)(1) | 300.00 |
| <input type="checkbox"/> | No evidence of five-year review of plan by owner/operator- 112.5(b) | 50.00 |
| <input type="checkbox"/> | No plan amendment(s) if the facility has had a change in: design, construction, operation,
or maintenance which affects the facility's discharge potential- 112.5(a) | 50.00 |
| <input type="checkbox"/> | Amendment(s) not certified by a professional engineer- 112.5(c) | 100.00 |
| <input type="checkbox"/> | Plan does not follow sequence of the rule and/or cross-reference not provided- 112.7 | 100.00 |

- Plan does not discuss additional procedures/methods/equipment not yet fully operational- 112.7 50.00
- Plan does not discuss conformance with SPCC requirement- 112.7(a)(1) 50.00
- Plan does not discuss alternative environmental protection to SPCC requirements- 112.7(a)(2) 50.00**
- Plan has inadequate or no facility diagram- 112.7(a)(3) 50.00**
- Plan has inadequate or no description of the physical layout of the facility- 112.7(a)(3)(i-vi) 100.00**
- Plan has inadequate or no information and procedures for reporting a discharge- 112.7(a)(4) 100.00**
- Plan has inadequate or no description and procedures to use when a discharge may occur- 112.7(a)(5) 100.00
- Inadequate or no prediction of equipment failure which could result in discharges- 112.7(b) 100.00
- Plan does not discuss appropriate containment/diversionary structures/equipment- 112.7(c) 100.00
- If claiming impracticability of appropriate containment/diversionary structures:
- Impracticability has not been clearly denoted and demonstrated- 112.7(d) 400.00
- No contingency plan- 112.7(d)(1) 100.00
- No written commitment of manpower, equipment, and materials- 112.7(d)(2) 100.00
- Plan has inadequate or no discussion of conformance with SPCC rules or applicable State rules, regulations and guidelines- 112.7(j) 50.00

WRITTEN PROCEDURES AND INSPECTION RECORDS 112.7(e)

- Inspections and tests required by 40 CFR Part 112 are not in accordance with written procedures developed for the facility- 112.7(e) 50.00
- Written procedures and/or a record of inspections and/or customary business records:
- Are not signed by appropriate supervisor or inspector- 112.7(e) 50.00
- Are not kept with the plan- 112.7(e) 50.00
- Are not maintained for three years- 112.7(e) 50.00

PERSONNEL TRAINING AND DISCHARGE PREVENTION PROCEDURES 112.7(f)

- No training on the operation and maintenance of equipment to prevent discharges- 112.7(f)(1) 50.00
- No training on discharge procedure protocols- 112.7(f)(1) 50.00**
- No training on the applicable pollution control laws, rules, and regulations- 112.7(f)(1) 50.00
- No training on general facility operations- 112.7(f)(1) 50.00
- No training on the contents of the SPCC Plan- 112.7(f)(1) 50.00
- No designated person accountable for spill prevention- 112.7(f)(2) 50.00
- Spill prevention briefings are not scheduled and conducted periodically- 112.7(f)(3) 50.00

Plan has inadequate or no discussion of personnel and spill prevention procedures 50.00

SECURITY (excluding Production Facilities) 112.7(g)

Facility not fully fenced and entrance gates are not locked and/or guarded when plant is unattended or not in production- 112.7(g)(1). 100.00

Master flow and drain valves that permit direct outward flow to the surface are not secured in closed position when in a non-operating or standby status- 112.7(g)(2). 200.00

Starter controls on pumps are not locked in the "off" position or located at a site accessible only to authorized personnel when pumps are not in a non-operating or standby status- 112.7(g)(3). 50.00

Loading and unloading connection(s) of piping/pipelines are not capped or blank-flanged when not in service or standby status- 112.7(g)(4). 50.00

Facility lighting not adequate to facilitate the discovery of spills during hours of darkness and to deter vandalism- 112.7(g)(5). 100.00

Plan has inadequate or no discussion of facility security 50.00

FACILITY TANK CAR AND TANK TRUCK LOADING/UNLOADING RACK 112.7(h)

Inadequate secondary containment, and/or rack drainage does not flow to catchment basin, treatment system, or quick drainage system- 112.7(h)(1). 500.00

Containment system does not hold at least the maximum capacity of the largest single compartment of any tank car or tank truck- 112.7(h)(1). 300.00

There are no interlocked warning lights, or physical barrier system, or warning signs, or vehicle brake interlock system to prevent vehicular departure before complete disconnect from transfer lines- 112.7(h)(2). .. 200.00

There is no inspection of lowermost drains and all outlets prior to filling and departure of any tank car or tank truck- 112.7(h)(3). 100.00

Plan has inadequate or no discussion of facility tank car and tank truck loading/unloading rack. 50.00

FACILITY DRAINAGE FROM DIKED AREAS 112.8(b) & (c)

Valves used for drainage from diked storage areas to drainage system, watercourse, or effluent treatment system not controlled to prevent a discharge- 112.8(b)(2). 200.00

Run-off rainwater from diked areas is not inspected- 112.8(c)(3)(ii) 300.00

Valves not opened and resealed under responsible supervision- 112.8(c)(3)(iii) 100.00

Adequate records (or NPDES permit records) of drainage from diked areas not maintained- 112.8(c)(3)(iv) 50.00

FACILITY DRAINAGE FROM UNDIKED AREAS 112.8(b)

Drainage from undiked areas do not flow into catchment basins ponds, or lagoons, or no diversion systems to retain or return a discharge to the facility- 112.8(b)(3)&(4). 400.00

Two "lift" pumps are not provided for more that one treatment unit- 112.8(b)(5) 100.00

Plan has inadequate or no discussion of facility drainage 50.00

BULK STORAGE CONTAINERS 112.8(c)

- Plan has inadequate or no risk analysis and/or evaluation of field-constructed aboveground tanks for brittle fracture- 112.7(i)** 50.00
 - Material and construction of tanks not compatible to the oil stored and the conditions of storage such as pressure and temperature- 112.8(c)(1). 300.00
 - Secondary containment appears to be inadequate- 112.8(c)(2) 500.00
 - Containment systems, including walls and floors are not sufficiently impervious to contain oil- 112.8(c)(2) 250.00
 - Excessive vegetation which affects the integrity and/or walls slightly eroded 200.00
 - Containment bypass valves are not sealed closed when not draining rainwater- 112.8(c)(3)(i) 400.00
 - Completely buried tanks are not protected from corrosion or are not subjected to regular pressure testing- 112.8(c)(4). 100.00
 - Partially buried or bunkered tanks do not have buried sections protected from corrosion- 112.8(c)(5). 100.00
 - Aboveground tanks are not subject to visual inspections- 112.8(c)(6) 200.00
 - Aboveground tanks are not subject to periodic integrity testing, such as hydrostatic, nondestructive methods, etc.- 112.8(c)(6). 300.00
 - Records of inspections (or customary business records) do not include inspections of tank supports/foundation, deterioration, discharges and/or accumulations of oil inside diked areas- 112.8(c)(6). 100.00
 - Steam return /exhaust of internal heating coils which discharge into an open water course are not monitored, passed through a settling tank, skimmer, or other separation system- 112.8(c)(7).** 100.00
- Container installations are not engineered if:**
- No audible or visual high liquid level alarm- 112.8(c)(8)(i), **or** 300.00
 - No high liquid level pump cutoff devices- 112.8(c)(8)(ii), **or** 300.00
 - No audible or code signal communications between tank gauger and pumping station- 112.8(c)(8)(iii), **or** 300.00
 - No fast response system for determining liquid levels, such as computers, telepulse or direct vision gauges- 112.8(c)(8)(iv). 300.00
 - No testing of liquid level sensing devices to ensure proper operation- 112.8(c)(8)(v) 50.00
 - Effluent treatment facilities which discharge directly to navigable waters are not observed frequently to detect oil spills- 112.8(c)(9) 100.00
 - Causes of leaks resulting in accumulations of oil in diked areas are not promptly corrected- 112.8(c)(10) 300.00
 - Mobile or portable storage containers are not positioned to prevent discharged oil from reaching navigable water- 112.8(c)(11) 100.00
 - Secondary containment inadequate for mobile or portable storage tanks- 112.8(c)(11) 500.00
 - Plan has inadequate or no discussion of bulk storage tanks 50.00

FACILITY TRANSFER OPERATIONS, PUMPING, AND FACILITY PROCESS 112.8(d)

<input type="checkbox"/>	Buried piping is not corrosion protected with protective wrapping, coating, or cathodic protection -112.8(d)(1).	100.00
<input type="checkbox"/>	Corrective action is not taken on exposed sections of buried piping when deterioration is found- 112.8(d)(1) . . .	300.00
<input type="checkbox"/>	Not-in-service or standby piping are not capped or blank-flanged and marked as to origin- 112.8(d)(2)	50.00
<input type="checkbox"/>	Pipe supports are not properly designed to minimize abrasion and corrosion, and allow for expansion and contraction- 112.8(d)(3).	50.00
<input type="checkbox"/>	Aboveground valves, piping and appurtenances are not inspected regularly- 112.8(d)(4)	200.00
<input type="checkbox"/>	Periodic integrity and leak testing of buried piping is not conducted- 112.8(d)(4)	100.00
<input type="checkbox"/>	Vehicle traffic is not warned of aboveground piping or other oil transfer operations- 112.8(d)(5).	100.00
<input type="checkbox"/>	Plan has inadequate or no discussion of facility transfer operations, pumping, and facility process.	50.00
TOTAL		\$ <u>1800.00</u>

Explanation of Violations:

1. The facility did not have an SPCC Plan.

40 C.F.R. § 112.3 requires that the owner or operator of an onshore facility subject to 40 C.F.R. Part 112 must prepare and implement a written SPCC plan. The facility is above the 1320-gallon threshold and has potential to impact waters. The facility must immediately prepare and implement an SPCC Plan. Regular inspections and training according to the SPCC rule [40 CFR § 112.7(e) and § 112.7(f)] must be documented with the plan and kept for a minimum of 3 years. Note that as of the December 2006 amendments, this facility is a qualified facility as it has less than 10,000 gallons capacity, and therefore, it may certify its own plan, and is not required to have a professional engineer certification unless it chooses to assert environmental equivalent measures or impracticability in the Plan.

2. The smaller tanks (200 gallon tanks and 55 gallon drums, excluding the waste oil tank) have inadequate secondary containment.

40 C.F.R. § 112.8(c)(2) requires that all bulk storage containers be provided with a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard for precipitation. The containment must be sufficiently impervious to contain discharged oil.

3. The facility does not perform integrity testing on its single-walled tanks and also does not regularly check the interstitial space of its double-walled tanks.

40 C.F.R. § 112.8(c)(6) requires that each aboveground container be tested for integrity on a regular schedule, and whenever material repairs are made. The frequency and type of testing must take into account the container size and design. You must combine visual inspection with another testing technique such as hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing or another system of non-destructive shell testing. Also, the double-walled tanks' interstitial spaces must be inspected regularly to make certain that the inner tank shell has not been compromised and that the outer shell is still acting as secondary containment. Records of these tests must be kept.

Area of Concern:

1. Oil accumulation was found on top of the blue double-walled 100 gallon tank.

40 C.F.R. § 112.8(c)(10) requires that any accumulations of oil in diked areas be promptly removed.

CERTIFICATION OF SERVICE

I certify that the original and the foregoing Expedited SPCC Settlement Agreement in the matter of **Cagwin & Dorward Landscape Contractors, SPCC-09-2008-0023** has been filed with the Region 9 Hearing Clerk and that copies were sent return receipt requested to the following:

Mr. David M. Keeney
Cagwin & Dorward Landscape Contractors
P.O. Box 1600
Novato, CA 94948

Certified Mail No.:
7007 0710 0003 6240 4807

Date: SEP 10 2008



Danielle Carr
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

cc: Ms. Elizabeth Whitsel (MS-002)
EPA Cincinnati Finance Center
26 W. Martin Luther King Dr.
Cincinnati, OH 45628