



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
http://www.epa.gov/region08

2012 AUG 14 AM 8:37

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2012-0021

IN THE MATTER OF:
McATEE CONSTRUCTION CO.
220 Edwards Street
Sterling, CO 80751
Respondent
FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby ORDERED to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

The Parties are hereby ORDERED to comply with all of the terms of this Order, effective immediately upon receipt by Parties of this Order.

SO ORDERED THIS 14th Day of August, 2012

[Signature]
Elyana R. Sutin
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2012 AUG 14 AM 8:38

FILED
EPA REGION VIII
WASHINGTON, DC

In the Matter of:)
)
McAtee Construction Company)
220 Edwards Street)
Sterling, Colorado 80751,)
)
Respondent.)

EXPEDITED CONSENT AGREEMENT
DOCKET NO. : CWA-08-2012-0021

1. Pursuant to 40 C.F.R. § 22.13(b), Complainant, United States Environmental Protection Agency, Region 8 (EPA), and McAtee Construction Company, by their undersigned representatives, hereby settle the civil cause of action arising out of violations of the Spill Prevention Control and Countermeasure (SPCC) Plan regulations, and agree as follows:
2. The Clean Water Act (the Act), as amended, 33 U.S.C. § 1321(b)(6), authorizes the Administrator of EPA to assess administrative penalties against any person who violates the oil pollution prevention (SPCC) regulations, promulgated at 40 C.F.R. Part 112 under Section 311(j) of the Clean Water Act, 33 U.S.C. § 1321(j). This authority has been properly delegated to the undersigned EPA official.
3. Respondent owns and/or operates McAtee Paving Company, 220 Edwards Avenue, Sterling, Colorado and Sterling Redi-Mix Company, 20758 Riverside Drive, Sterling, Colorado, both in Logan County (Facilities).
4. The McAtee Paving Company is located approximately one-half mile from the Lowline Ditch, which flows approximately three miles to the South Platte River, a traditional navigable water. Discharges of harmful quantities of oil from the facility could reasonably be expected to reach navigable waters of the United States or adjoining shorelines.

5. The Sterling Redi-Mix Company is located approximately one-half mile from the South Platte River, a traditional navigable water. Discharges of harmful quantities of oil from the facility could reasonably be expected to reach navigable waters of the United States or adjoining shorelines.
6. The Facilities have a total storage capacity of approximately 56,630 gallons of oil and are subject to the SPCC regulations.
7. Respondent admits its Facilities are subject to the SPCC regulations.
8. The Facilities were inspected by EPA on July 7, 2010, at which time the Respondent was notified that the Facilities did not have an adequate SPCC Plan and had not adequately implemented their SPCC Plan.
9. On June 22, 2012, Respondent submitted photo documentation to EPA showing correction of SPCC Plan implementation violations.
10. On June 26, 2012, Respondent submitted to EPA a revised SPCC plan dated August 10, 2010, which was found to be compliant with the SPCC regulations.
11. Respondent admits that from the date of the EPA inspection on July 7, 2010, until June 22, 2012, it failed to prepare and implement an SPCC Plan for the Facilities in accordance with 40 C.F.R. §§ 112.7 and 112.8
12. Respondent admits that EPA has jurisdiction in this proceeding.
13. Respondent waives its right to a hearing before any civil tribunal to contest any issue of law or fact set forth in this Agreement.
14. This Agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent, including but not limited to any transfer of

assets or real or personal property, shall not alter Respondent's responsibilities under this Agreement.

15. This Agreement contains all terms of the settlement agreed to by the parties.
16. Respondent consents and agrees to the assessment of a civil penalty of \$750.00 for the violations cited in paragraph 11 above, which shall be paid no later than thirty (30) calendar days after the effective date of the Final Order by means of a cashier's or certified check, or by wire transfer. If paying by check, the Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notations "OSLTF - 311" and the title and docket number of this case. If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

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

If the Respondent sends payment by overnight mail, the payment shall be sent to:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087

Wire transfers shall be directed to:

Federal Reserve Bank of New York
ABA: 021030004
Account: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."

17. The Respondent shall submit copies of the check (or, in the case of a wire transfer, copies of the confirmation) to the following persons:

**Tina Artemis, Regional Hearing Clerk (SRC)
U.S. EPA Region 8
1595 Wynkoop
Denver, CO 80202-1129**

and

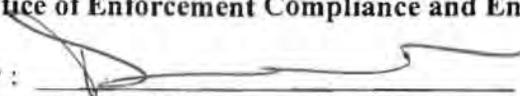
**Cynthia Peterson
Technical Enforcement Program (8ENF-UFO)
U.S. EPA Region 8
1595 Wynkoop
Denver, CO 80202-1129**

18. Respondent will implement and maintain an SPCC plan in accordance with 40 C.F.R. § 112.
19. Respondent further agrees and consents that if Respondent fails to pay the penalty amount as required by this Agreement once incorporated into the Final Order, EPA may pursue any applicable enforcement options.
20. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this Agreement and to bind Respondent to the terms and conditions of this Agreement.
21. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.
22. Each party shall bear its own costs and attorneys fees in connection with this matter.
23. Respondent agrees that no amount of the civil penalty to be paid shall be used to reduce its federal or state tax obligations.

24. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations described in this Agreement.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8,
Office of Enforcement Compliance and Environmental Justice, Complainant.**

By :


Darcy O'Connor, Acting Director
UIC/FIFRA/OPA Technical Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice

Date:

8/10/12

MCATEE CONSTRUCTION COMPANY, Respondent.

By :



Date:

7-30-12

Name:

Darren Gebhart

Title:

Construction Manager

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED CONSENT AGREEMENT AND FINAL ORDER** in the matter of **McATEE CONSTRUCTION CO.;** **DOCKET NO.: CWA-08-2012-0021**, was filed with the Regional Hearing Clerk on August 14, 2012.

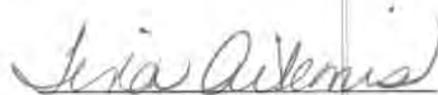
Further, the undersigned certifies that a true and correct copy of the document was delivered to Brenda Morris, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail on August 14, 2012, to:

Darren Gebhart, Construction Manager
McAtee Construction Co.
220 Edwards Street
Sterling, CO 80751

And emailed to:

Elizabeth Whitsel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

August 14, 2012



Tina Artemis
Paralegal/Regional Hearing Clerk