

RECEIVED

RESPONDENT

E&S CONTRACTING INCORPORATED
Route 1 Lucas Road
P.O. Box 557
Shinnston, WV 26431

2013 MAY 29 PM 4: 43
REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

FACILITY

Bobtail Tanker Truck
E&S CONTRACTING INCORPORATED
Route 88 & Highway 7/3
West Liberty, Ohio County, WV 26074

Total Gallons spilled: 630 gallons

As more fully described in the attached Findings and Alleged Civil Violations Form, which is incorporated herein by reference, Respondent had a spill from its Facility which reached a navigable water or its adjoining shoreline. This spill of oil was in a harmful quantity as defined by 40 C.F.R. §110.3, and is a violation of the Clean Water Act, as amended, ("CWA"), 33 U.S.C. §1321 (b)(3), and may be subject to a penalty pursuant to 33 U.S.C. §1321 (b)(6)(B)(i).

The parties are 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 \$2,500.

The settlement is subject to the following terms and conditions.

The Respondent consents to the assessment of the penalty stated above. The settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the seriousness of the violations and the other factors provided in CWA Section 1321(b)(8) and EPA's Civil Penalty Policy for CWA Sections 311(b)(3) and 311(j) dated August 1998. Respondent certifies, subject to civil and criminal penalties for making a false statement to the United States Government that the violations set forth in the Findings Alleged Violations and Proposed Penalty Form have been corrected. The Respondent agrees that it shall, within 15 calendar days of receipt of an executed copy of this Expedited Penalty Action, make payment of \$2,500 in one of two forms: 1) electronic funds transfer (EFT) or 2) a cashier's check or certified check payable to the "Environmental Protection Agency", with the Docket Number, located at the top right-hand corner of the Expedited Penalty Action, and "Oil Spill Liability Trust Fund - 311" referenced on the check.

Federal Reserve Bank of New York

ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Avenue
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

Payment of the penalty amount by regular US Postal
Service shall be sent via certified mail to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis MO 63197-9000

Payment of the penalty amount by FedEx or other
non-US Postal Service express mail shall be sent to:

US Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
(314) 418-4087

The Respondent shall also send a copy of the EFT confirmation or check via certified mail to:

Paula Curtin, Spill Enforcement Coordinator
U.S. Environmental Protection Agency, Region III
Oil & Prevention Branch (3HS61)
1060 Chapline Street
Wheeling, WV 26003-2996

Lydia Guy, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III
1650 Arch Street (3RC00)
Philadelphia, PA 19103-2029

The payment made pursuant to this Expedited Penalty Action is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. §162(f), and, therefore, Respondent shall not claim it as a tax deductible expenditure for purposes of federal, state or local law.

EPA specifically reserves the right, without limitation to any of the rights reserved herein, to bring any administrative, civil, or criminal action seeking imposition of further civil penalties, criminal sanctions, and/or injunctive relief.

Respondent neither admits nor denies the allegations set forth in the Form, but agrees that jurisdiction has been established for this Expedited Penalty Action. Also, upon EPA's final approval of the Expedited Penalty Action, Respondent expressly waives its right to contest the allegations, to a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. §1321(b)(6)(B)(i), and to appeal this Order under Section 311(b)(6)(G)(i) of the Act, 33 U.S.C. §1321(b)(6)(G)(i). Moreover, in entering into this Consent Agreement, the Respondent agrees to bear its own costs and attorney's fees related to this Expedited Penalty Action.

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 violations identified in the Form.

ACCEPT THE PROPOSED PENALTY

I/we consent to the proposed penalty.

DECLINE THE PROPOSED PENALTY

I/we decline the proposed penalty. If you choose to decline this proposed penalty, check the box. You may be subject to formal enforcement action and, in that event, will have an opportunity to a hearing related to any subsequent penalty assessment.

EFFECTIVE DATE

This Expedited Penalty Action will be effective upon filing.

The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to execute this Expedited Penalty Action and to legally bind the party whom he or she represents to this Expedited Penalty Action.

RESPONDENT

Signature Stephen W Moore Date: May 8-2013
Name and Title (print) Stephen W Moore Pres.

The estimated cost of the clean-up and corrective actions was

\$ 100,000

SIGNATURE BY COMPLAINANT:

K. Hodgkiss Date 5/21/13
Kathryn A. Hodgkiss, Acting Director
Hazardous Site Cleanup Division

FINAL ORDER

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. §1321(b)(6), and in accordance with the Consolidated Rules of Practice, 40 CFR Part 22, and having relied upon the representations of the parties set forth in the Consent Agreement, I have determined that the penalty assessed herein is based on a consideration of the factors set forth in CWA Section 1321(b)(8) and EPA's Civil Penalty Policy for CWA Sections 311(b)(3) and 311(j) dated August 1998.

THEREFORE, the foregoing Consent Agreement is hereby approved and incorporated by reference into the Final Order. The Respondent is ORDERED, as set forth above, to pay the civil penalty.

Renee Sarajian
Renee Sarajian,
Regional Judicial Officer

Date: 5/28/13

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

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| In the Matter of: |) | EPA Docket No.: CWA-03-2013-0108 |
| Stephen Moore |) | |
| President |) | |
| E&S Contracting Incorporated |) | |
| P.O. Box 557 |) | |
| Shinnston, WV 26431 |) | Proceedings under Section 311 of the Clean Water Act, 33 U.S.C. § 1321. |

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of Complainant's, the United States Environmental Protection Agency's, Expedited Settlement Agreement with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true, and correct copies of the Expedited Settlement Agreement, were sent to:

Via certified mail, return receipt requested

**Stephen Moore
President
E&S Contracting Incorporated
P.O. Box 557
Shinnston, WV 26431**

05/29/13
Date

Paula Curtin
Paula Curtin (3H061)
for