



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAY 29 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Kathleen M. Mahoney
Vice President and General Counsel
Nash Finch Company
7600 France Avenue South
Edina, Minnesota 55435

SUBJ: Consent Agreement and Final Order:
Docket No. CWA-04-2012-5011

Dear Ms. Mahoney:

Enclosed is a copy of the Consent Agreement and Final Order for the above referenced matter. This CAFO became effective on the date of filing with the Regional Hearing Clerk as required by 40 C.F.R. §§ 22.6 and 22.31, and as indicated on the Certificate of Service.

The United States Environmental Protection Agency hereby notifies you that the Expedited Settlement Agreement has been executed by both parties and is binding on the EPA and you. Upon receipt of your assessed penalty of \$500.00, the EPA will take no further action against you for the violations cited in the ESA. Your copy of the executed ESA is enclosed.

You must submit your payment within thirty (30) days of your receipt of this letter by either electronic funds transfer, certified or cashiers check made payable to "Environmental Protection Agency." The check and a letter accompanying the check shall reference the name of the responsible party (Oil Spill Liability Trust Fund-311, Nash Finch Company) and the EPA docket number CWA-04-2012-5011, and shall be sent depending upon your preferred method of payment identified in Enclosure A.

At the same time, you shall send a separate copy of each check and a written statement that the payment is being made in accordance with this CAFO, to the persons at the following addresses:

Ms. Patricia Bullock
Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Mr. Mel Rechtman
South Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

If you have any questions, please contact Mel Rechtman at (404) 562-8745.

Sincerely,



César A. Zapata, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

Enclosures:

1. Expedited Settlement Agreement
2. Payment Information

cc: USCG

MAY 21 2012

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
61 FORSYTH STREET, ATLANTA, GEORGIA 30303
EXPEDITED SPILL SETTLEMENT AGREEMENT

DOCKET NO. CWA-04-2012-5011

On: February 1, 2012 Time: 17:30:
At or near the Building 9230, Fort Benning,
Chattahoochee County, Georgia, Nash Finch Company
(Respondent) discharged an estimated 240 gallons of oil
in violation of Section 311(b)(3) of the Clean Water Act
(the Act), as noted on the attached ALLEGED CIVIL
VIOLATION (Form), which is hereby incorporated by
reference.

The EPA finds the Respondent's conduct is subject to the
discharge prohibition of Section 311(b)(3) of the Act, as
described in that statute and further described by
40 C.F.R. § 110.3. The Respondent admits being subject
to Section 311(b)(3) and that the EPA has jurisdiction
over the Respondent and the Respondent's conduct as
described in the Form. Respondent neither admits nor
denies the Allegation in the Form.

The EPA is authorized to enter into this Expedited Spill
Settlement Agreement under the authority vested in the
Administrator of the 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 C.F.R. § 22.13(b).
The parties enter into this Expedited Spill Settlement
Agreement in order to settle the civil violation described
in the Form for a penalty of \$500.00. Respondent consents
to the assessment of this penalty.

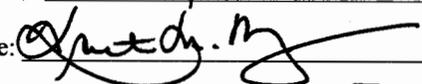
This Expedited Spill Settlement Agreement is also subject
to the following terms and conditions: Respondent
certifies, subject to civil and criminal penalties for making
a false submission to the United States Government, that
it has investigated the cause of the spill, it has cleaned up
the spill pursuant to federal requirements at a cost of
\$ 17,352.00 and it has taken corrective actions that will
prevent future spills. The Respondent also by signature on
this Expedited Spill Settlement Agreement agrees to
payment of the penalty assessed. **Do not enclose
payment.** Upon receiving written execution of this
Agreement, Respondent shall submit payment within 30
days by certified check or electronic funds transfer for
\$500.00 payable to the "US Environmental Protection
Agency CWA-311". Instructions on how to make this
payment will be included in the written notice that will be
issued when the Expedited Spill Settlement Agreement
becomes effective.

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

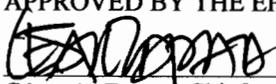
After this Expedited Spill Settlement Agreement
becomes effective and the assessed penalty is paid, the
EPA will take no further action against the Respondent
for the violation of Section 311(b)(3) of the Act
described in the Form. However, the EPA does not
waive any rights to take any enforcement action for any
other past, present, or future violation by the Respondent
of Section 311(b)(3) of the Act or of any other federal
statute or regulation. By its first signature, the EPA
ratifies the Findings and Alleged Violation set forth in
the Form.

This Expedited Spill Settlement Agreement is binding on
the parties signing below, and effective upon the EPA's
filing of the document with the Regional Hearing Clerk.
If the Respondent does not sign and return this
Expedited Spill Settlement Agreement as presented
within 14 days of the date of its receipt, the proposed
Expedited Spill Settlement Agreement is withdrawn
without prejudice to the EPA's ability to file any other
enforcement action for the violation identified in the
Form.

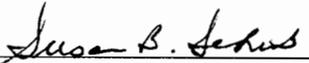
APPROVED BY RESPONDENT:

Name (print): Kathleen M. Mahoney
Title (print): Exec. VP, General Counsel & Secretary
Signature: 

APPROVED BY THE EPA:


Date: 05/29/12
César A. Zapata, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

IT IS SO ORDERED:


Date: 5/29/12
Susan B. Schub
Regional Judicial Officer

RECEIVED
EPA REGION IV
2012 MAY 29 PM 2:58
HEARING CLERK

ALLEGED CIVIL VIOLATION - DOCKET NO. CWA-04-2012-5011

1. Nash Finch Company, Respondent, is a corporation with a place of business located at 7600 France Avenue South, Minneapolis, Minnesota 55435. The respondent is a person within the meaning of Section 311(a)(7) of the Clean Water Act, 33 U.S.C. § 1321(a)(7) (Act).
2. Respondent is the owner of an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), which was a tractor trailer located at or near Building 9230, in Fort Benning, Chattahoochee County, Georgia (“facility”).
3. Section 311(b)(3) of the Act prohibits the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.
4. For purposes of Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health, welfare or environment of the United States are defined in 40 C.F.R. § 110.3 to include discharges of oil that (1) violate applicable water quality standards, (2) cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines or, (3) cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.
5. On February 1, 2012, Respondent discharged an estimated 240 gallons of oil as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), from its facility into or upon the unnamed tributary to Hamlet Creek, which flows into Upatoi Creek, which flows into the Chattahoochee River, and adjoining shorelines.
6. The unnamed tributary to Hamlet Creek, which flows into the Upatoi Creek, which flows into the Chattahoochee River, is a “navigable water of the United States”, as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1, and is subject to the jurisdiction of Section 311 of the Act.
7. Respondent’s February 1, 2012, discharge of oil from its facility caused a sheen upon or discoloration of the surface or the adjoining shoreline of the unnamed tributary to Hamlet Creek, or caused a sludge or emulsion to be deposited beneath the surface, and therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3.
8. Respondent’s February 1, 2012, discharge of oil from its facility into or upon the unnamed tributary to Hamlet Creek and adjoining shorelines in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3 violated Section 311(b)(3) of the Act. Pursuant to Section 311(b)(6)(B)(i) of the Act, and 40 C.F.R. § 19.4, the Respondent is liable for civil penalties of up to \$16,000 per violation, up to a maximum of \$37,500.

Docket No. CWA-04-2012-5011

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached Consent Agreement and Final Order, in the Matter of Nash Finch Company, Docket No. CWA-04-2012-5011 (filed with the Regional Hearing Clerk on MAY 29 2012, 2012) was served on MAY 29 2012, 2012 in the manner specified to each of the person set forth below:

Ms. Kathleen M. Mahoney
Vice President and General Counsel
Nash Finch Company
7600 France Avenue South
Edina, Minnesota 55435

CERTIFIED MAIL

Return Receipt Requested

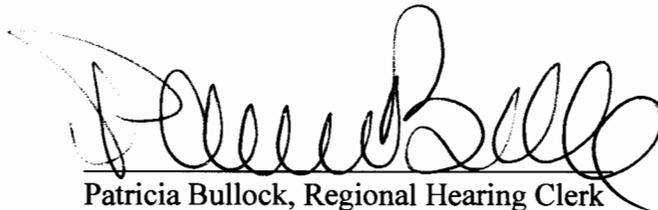
Mel Rechtman
RCRA and OPA Enforcement and Compliance Branch
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Via EPA's Internal Mail

Quantindra Smith
RCRA & OPA Enforcement & Compliance Branch
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Via EPA's Internal Mail and PDF

Date: 5-29-12



Patricia Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9511

ENCLOSURE A

COLLECTION INFORMATION

CHECK PAYMENTS:

U.S. Environmental Protection Agency
Fines and Penalties
P.O. Box 979077
St. Louis, Missouri 63197-9000

WIRE TRANSFERS:

Wire transfers should be directed to the Federal Reserve Bank of New York

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

OVERNIGHT MAIL:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

Contact: Natalie Pearson 314-418-4087

ACH (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving U.S. currency
US Treasury REX / ACH Receiver
5700 Rivertech Court
Riverdale, Maryland 20737
Contacts: John Schmid 202-874-7028 or
Remittance Express 1-866-234-5681
ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 310006
CTX Format

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

PAYMENT DUE DATE: _____

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Mel Rechtman on 5/21/12
(Name) (Date)

in the ROECB at 404/562-8745
(Office) (Phone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Nash Finch Company

The Total Dollar Amount of the Receivable: 500.00
(If installments, attach schedule of amounts and respective due dates. See other side of this form.)

The Case Docket Number: CWA-04-2012-5011

The Site Specific Superfund Account Number:

The Designated Regional/Headquarters Program Office: RCRA Division

To Be Completed By Cincinnati Finance Center

The IFMS Accounts Receivable Control Number is: _____ Date: /2011

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044

2. Originating Office (EAD)
3. Designated Program Office

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order Should be to:

1. Originating Office
2. Regional Hearing Clerk

3. Designated Program Office
4. Regional Counsel (EAD)