

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

IN THE MATTER OF  
Spinx Transportation, Inc.  
P.O. Box 8624  
Greenville, SC 29604  
Respondent.

**CWA SECTION 311 CLASS II  
CONSENT AGREEMENT,  
UNDER 40 C.F.R. § 22.13(b)**

Docket No. CWA - 04 - 2007 - 5166

HEARING CLERK

2007 JUL 24 PM 2:31

RECEIVED  
EPA REGION IV

**LEGAL AUTHORITY**

1. This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(ii) of the Clean Water Act ("Act"), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 4, who has in turn delegated them to the Director of the RCRA Division of EPA, Region 4 ("Complainant").

**CONSENT AGREEMENT**

**Stipulations**

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

2. Respondent is a corporation organized under the laws of South Carolina with a place of business located in Greenville, South Carolina. The Respondent is a person within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7) and 40 C.F.R. § 110.1.

3. Respondent is the owner/operator of an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. §1321(a)(10), and 40 C.F.R. § 110.1, which is a tanker truck located at the corner of Highways 295 and 296 in Spartanburg, South Carolina at times relevant to this Consent Agreement ("facility").

4. Fairforest Creek 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.

5. Section 311(b)(3) of the Act prohibits the discharge of oil or a hazardous substance 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.

6. 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 or welfare or environment of the United States are defined in 40 C.F.R. § 110.3 to include discharges of oil that violate applicable water quality standards or cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

7. Respondent admits the jurisdictional statements.

### Allegations

Respondent neither admits nor denies:

8. On May 24, 2002, Respondent discharged 6,258 gallons of oil as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 110.1, from its facility into Fairforest Creek.

9. The May 24, 2002, spill occurred at the corner of J.B. White Boulevard and State Route 295 near Spartanburg in Spartanburg County South Carolina after a loaded semi-tank-wagon operated by a driver employed by the Spinx Transportation, Inc. rolled over and caused oil to be released into Fairforest Creek

10. Respondent's May 24, 2002, discharge of oil from its facility into or upon the Fairforest Creek and its adjoining shorelines caused a sheen and was therefore harmful under 40 C.F.R. § 100.3.

11. Respondent's May 24, 2002, discharge of oil from its facility into or upon the Fairforest Creek and its 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.

12. South Carolina Department of Health and Environmental Control (SCDHEC), the EPA, local fire authorities, and Spinx Transportation, Inc.'s response contractors (Phillips Recoveries and JB Environmental Services) all responded to the spill.

13. Spinx Transportation, Inc. was successful in completing the cleanup of the release expeditiously and to the satisfaction of SCDHEC and EPA.

**Waiver of Rights**

14. Respondent waives the right to a hearing under Section 311(b)(6)(B)(ii) of the Act and to appeal any Final Order in this matter under Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

15. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this Consent Agreement or the Final Order.

**Penalty**

16. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of TWENTY SEVEN THOUSAND DOLLARS (\$27,000.00).

**Payment Terms**

Based on the forgoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

17. No later than 30 days after the effective date of the Final Order, the Respondent shall pay the amount of \$27,000.00 by means of a cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, the Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311." If the

Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency  
P.O. Box 371099M  
Pittsburgh, PA 15251

If the Respondent sends payment by a private delivery service, the payment shall be addressed to:

Mellon Client Service Center  
ATTN: Shift Supervisor  
Lockbox 371099M Account 9109125  
500 Ross Street  
Pittsburgh, PA 15262-0001

If paying by EFT, the Respondent shall transfer \$27,000.00 to:

Mellon Bank  
ABA 043000261  
Account 9109125  
22 Morrow Drive  
Pittsburgh, PA 15235

In the case of an international transfer of funds, the Respondent shall use SWIFT address  
MELNUS3P.

18. If paying by check, the Respondent shall note on the penalty payment check the title and docket number of this case. The Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the following people:

Patricia Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 4  
Atlanta Federal Center  
61 Forsyth Street  
Atlanta, GA 30303

Doug C. McCurry, Chief  
North Enforcement and Compliance Section  
RCRA Enforcement and Compliance Branch  
U.S. Environmental Protection Agency  
Region 4  
Atlanta Federal Center  
61 Forsyth Street  
Atlanta, GA 30303

19. Respondent's failure to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

**General Provisions**

20. Complainant reserves the right, pursuant to 40 C.F.R. § 22.45(c)(4)(iii), to withdraw this Consent Agreement and proposed Final Order within 15 days of receipt of a Commentor's petition requesting, pursuant to 40 C.F.R. § 22.45(c)(4)(ii), that the Regional Administrator set aside the Consent Agreement and proposed Final Order on the basis that material evidence was not considered.

21. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

22. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law.

Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein.

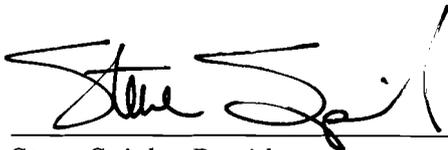
23. The undersigned representative of Respondent hereby certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind Respondent to this Consent Agreement.

**Effective Date**

24. This Consent Agreement and Final Order is effective upon the filing of the Final Order with the Regional Hearing Clerk.

Spinx Transportation, Inc.

Date: 3/13/07

  
Steve Spinks, President

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 5/3/07

  
G. Alan Farmer  
Director  
RCRA Division

**FINAL ORDER**

Pursuant to Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6) and the delegated authority of the undersigned, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," codified at 40 C.F.R. Part 22, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and Allegations by the Complainant are adopted as Findings in this Final Order.

The Respondent is ordered to comply with the terms of the Consent Agreement.

Date: JUL 23 2007

A handwritten signature in black ink, appearing to read "J. I. Palmer, Jr.", written over a horizontal line.

J. I. Palmer, Jr.  
Regional Administrator

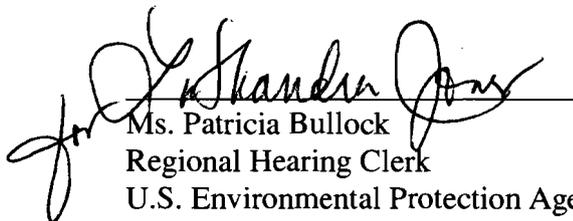
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the Foregoing Consent Agreement and Final Order, in the Matter of Spinx Transportation, Inc. Docket No. CWA-04-2007-5166, on the parties listed below in the manner indicated:

Joan Redleaf-Durbin (Via EPA Internal Mail)  
Office of Environmental Accountability  
U.S. Environmental Protection Agency - Region 4  
61 Forsyth Street  
Atlanta, GA 30303

Mr. Steve Spinks (Via Certified Mail Return Receipt Requested)  
President  
Spinx Transportation, Inc.  
P.O. Box 8624  
Greenville, SC 29604

Dated this 24<sup>th</sup> day of July 2007,



Ms. Patricia Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 4  
61 Forsyth Street  
Atlanta, GA 30303

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

PAYMENT DUE DATE: \_\_\_\_\_

**TO BE COMPLETED BY THE ORGINATING OFFICE:**

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

This form was originated by: Alan Newman on 7/17/2007  
(Name) (Date)

in the ROECB at (404) 562 - 8589  
(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: Spinx Transportation, Inc.

The Total Dollar Amount of the Receivable: 27,000  
(If installments, attach schedule of amounts and respective due dates. See other side of this form.)

The Case Docket Number: CWA - 04 - 2007 - 5166  
The Site Specific Superfund Account Number: \_\_\_\_\_

The Designated Regional/Headquarters Program Office: Waste

**To Be Completed By Cincinnati Finance Center**

The IFMS Accounts Receivable Control Number is: \_\_\_\_\_ Date: 0/00/2007  
**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<br>Environmental Enforcement Section<br>Department of Justice RM 1647<br>P.O. Box 7611, Benjamin Franklin Station<br>Washington, D.C. 20044 | 2. Originating Office (EAD)<br>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     | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD)    |