



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 11 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

William B. Jones, Esq.
Associate Corporate Counsel
Werner Enterprises, Inc.
14507 Frontier Road
Omaha, NE 68138

SUBJ: Consent Agreement and Final Order
Docket Nos. CWA-04-2007-5185(b), CWA-04-2007-5186(b) and CWA-04-2007-5187(b)

Dear Mr. Jones:

Enclosed is a copy of the Consent Agreement and Final Order (CAFO) 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.

Please submit your penalty payments of \$710.00, \$890.00 and \$3,500.00 within 30 days of the effective date of the CAFO by electronic funds transfer (EFT), or certified or cashier's check made payable to "Environmental Protection Agency." The check and a letter accompanying the check shall reference the name of the case as follows: "Oil Spill Liability Trust Fund - CWA 311, Werner Enterprises, Inc.", as well as the EPA docket numbers CWA-04-2007-5185(b), CWA-04-2007-5186(b), and CWA-04-2007-5187(b), and shall be sent depending upon your preferred method of payment identified in Enclosure A.

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

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

Larry Lamberth, Acting Chief
South Enforcement and Compliance Section
RCRA/OPA Enforcement & Compliance Branch
US EPA, Region 4

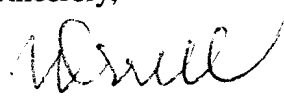
Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)

61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

If you have any questions, please call me at (404) 562-9701. Thank you for helping to resolve this matter quickly.

Sincerely,

A handwritten signature in cursive script, appearing to read "N. Orrell".

Nadine Orrell
Associate Regional Counsel

Enclosures:
Settlement Agreement
Payment Information

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

DOCKET NO. CWA-04-2007-5185(b)

On: January 4, 2005
Time: 14:30 EST

At: Interstate 459 northbound, approximately half mile north of the Interstate 20 junction in Birmingham, Jefferson County, Alabama, Werner Enterprises, Inc. (Respondent) discharged 150 gallons of diesel fuel oil in violation of Section 311(b)(3) of the Clean Water Act (the Act), as noted on the attached ALLEGED CIVIL VIOLATIONS (Form), which is hereby incorporated by reference.

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 EPA has jurisdiction over the Respondent and the Respondent's conduct as described in the Form. Respondent does not contest the allegations in the Form, and waives any objections it may have to EPA's jurisdiction.

EPA is authorized to enter into this Settlement Agreement 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 C.F.R. § 22.13(b). The parties enter into this Settlement Agreement in order to settle civil violations described in the Form for a penalty of \$710.00. Respondent consents to the assessment of this penalty.

This 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 \$21,388.43, and it has taken corrective actions that will prevent future spills. The Respondent also by signature on this Settlement Agreement agrees to payment of the penalty assessed. **Do not enclose payment.** Upon receiving written execution of this Settlement Agreement, Respondent shall submit payment within 14 days by certified check or electronic funds transfer for \$710.00 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 Settlement Agreement becomes effective.

Upon signing and returning this Settlement Agreement 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 Settlement Agreement without further notice.

After this Settlement Agreement becomes effective, EPA will take no further action against the Respondent for the violations of Section 311(b)(3) of the Act 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 Section 311(b)(3) of the Act or of any other federal statute or regulation. By its first signature, EPA ratifies the Alleged Civil Violations set forth in the Form.

This Settlement Agreement is binding on the parties signing below, and effective upon EPA's filing of the document with the Regional Hearing Clerk.

APPROVED BY RESPONDENT:

Werner Enterprises, Inc
Name (print): By Charles R Stevens
Title (print): U.P. Risk Mgmt + Corp Admin
Werner Enterprises, Inc
Signature: Charles R Stevens

APPROVED BY EPA:

N. Kumar Date 9/11/07
Narindar Kumar, Chief
RCRA/OPA Enforcement & Compliance Branch
RCRA Division

IT IS SO ORDERED:

Susan B. Schub Date 9/11/07
Susan B. Schub
Regional Judicial Officer

RECEIVED
EPA REGION IV
2007 SEP 11 PM 3:45
HEARING CLERK

ALLEGED CIVIL VIOLATIONS - DOCKET NO. CWA-04-2007-5185(b)

1. Werner Enterprises, Inc., Respondent, is a Corporation organized under the laws of Nebraska with a place of business at 14507 Frontier Road, Omaha, NE 68138. Respondent, owner of a transportation and logistic company, provides over-the-road trucking services. 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 is located on the Interstate 459 northbound, approximately half mile north of the Interstate 20 junction in Birmingham, Jefferson County, Alabama ("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 or 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 or, (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 January 4, 2005, Respondent discharged an estimated 150 gallons of diesel fuel 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 or upon an unnamed stream, which leads to Cahaba River, which leads to the Alabama River, which leads to the Mobile River, which leads to the Mobile Bay.
6. The unnamed stream which discharges into the Cahaba River is a "navigable water of the U. S." subject to the jurisdiction of Section 311 of the Act as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.
7. Respondent's January 4, 2005, discharge of diesel fuel oil from its facility caused a sheen upon the surface or the adjoining shoreline of the unnamed stream which discharges into Cahaba River 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 January 4, 2005, discharge of diesel fuel oil from its facility into or upon the unnamed stream which discharges into Cahaba River 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 \$11,000 per violation, up to a maximum of \$32,500.

ENCLOSURE A

PAYMENT INFORMATION

Wire Transfers

SWIFT Address MELNUS3P - (SWIFT address is only needed on international transfers)

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

Contact - Patricia McKaveney at 412-234-5805

CHECK PAYMENTS

US checks by regular US postal service mail

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

Contact - Patricia McKaveney at 412-234-5805

For FedEx and other non-US Postal Service express mail the correct address is:

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

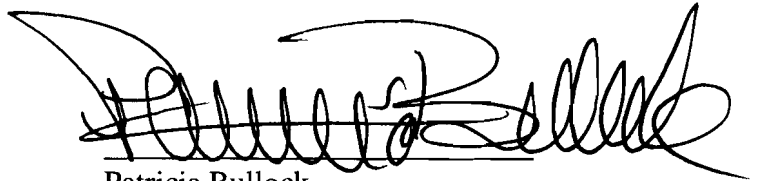
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the originals and a copy of the foregoing **IN THE MATTER OF WERNER ENTERPRISES, INC., Docket Nos. CWA-04-2007-5185(b), CWA-04-2007-5186(b), and CWA-04-2007-5187(b)** were hand delivered to the Regional Attorney, and that true and accurate copies were served via Certified Mail, Return Receipt, to Counsel for Respondent as follows:

Original by Hand-Delivery: Nadine Orrell
Associate Regional Counsel
U.S. EPA, Region 4
61 Forsyth St.
Atlanta, GA 30303

Copy by Certified Mail,
Return Receipt William B. Jones, Esq.
Associate Corporate Counsel.
Werner Enterprises, Inc.
14507 Frontier Road
Omaha, NE 68138

DATE: 9-11-07



Patricia Bullock
Regional Hearing Clerk
Environmental Accountability Division
U.S. EPA Region 4