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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 9  
75 HAWTHORNE STREET, SAN FRANCISCO, CALIFORNIA 94105  
EXPEDITED DISCHARGE SETTLEMENT AGREEMENT**

2007 FEB -9 AM 11:28

REGIONAL HEARING CLERK

DOCKET NO.: OPA-09-2007-0003

On: August 29, 2006

From: A Tanker Truck

At: 1440 Country Hills Dr.  
Fullerton, CA 92835

Owned or Operated by: Flying J (Respondent)

Respondent discharged 840 gallons of oil in violation of Section 311(b)(3) of the Clean Water Act (the "Act"), as noted on the attached FINDINGS and ALLEGED CIVIL VIOLATIONS FORM (Form), which is hereby incorporated by reference.

EPA finds that the Respondent is subject to the Act and has violated the Act by discharging a harmful quantity of oil, as further described by 40 CFR § 110.3, into navigable waters of the United States or adjacent shorelines. The Respondent admits to being subject to the Act and that EPA has jurisdiction over the Respondent and the Respondent's conduct as described in the Form. Respondent does not contest the Findings, and waives any objections Respondent may have to EPA's jurisdiction.

EPA is 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 \$500.00. The Respondent consents to the assessment of this penalty.

This Expedited Settlement also is 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, has cleaned up the spill pursuant to federal requirements, has taken any required corrective actions that will prevent future spills, and has sent a certified check in the amount of \$500.00, payable to the "Environmental Protection Agency," to: "U. S. Environmental Protection Agency, P.O. Box 371099M, Pittsburgh, PA 15251." Respondent has noted on the penalty payment check "Spill Fund - 311" and the document number of the settlement agreement.

This Expedited Settlement must be returned by certified mail to: OPA Enforcement Coordinator, U.S. Environmental Protection Agency, Region 9 (SPD-9-4), 75 Hawthorne Street, San Francisco, California 94105-3901. The certified check for payment must be sent by certified mail to: U. S. Environmental Protection Agency, P.O. Box 371099M, Pittsburgh, PA 15251.

After this Expedited Settlement becomes effective, EPA will take no further civil action against the Respondent for the violations 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 the Act or of any other federal statute or regulations.

Upon signing and returning this Expedited Settlement to EPA, Respondent waives the opportunity for a hearing or appeal pursuant to Section 311 of the Act, 33 U.S.C. § 1321, and consents to EPA's approval of the Expedited Settlement without further notice.

This Expedited Settlement is binding on the parties signing below, and is effective after signature by the Regional Judicial Officer. 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 noncompliance identified in the Form.

APPROVED BY EPA:

*[Signature]* Date: 2/8/07  
Keith Takita, Director  
Superfund Division

APPROVED BY RESPONDENT:

Name (print): ZANE B. ATKINSON  
Title (print): VICE PRESIDENT

*[Signature]* Date: 1/4/07  
Signature

IT IS SO ORDERED:

*[Signature]* Date: 02/09/07  
Steven Jawgiel  
Regional Judicial Officer

EPA REV. 06/05/2005

## **FINDINGS AND ALLEGED CIVIL VIOLATIONS**

1. Flying J (Respondent) is a corporation organized under the laws of the state of Utah with a place of business located at 1104 Country Hills Dr., Ogden, Utah. The Respondent is a person within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7) (the "Act").

2. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), 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.

3. 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 a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

4. On or about August 29, 2006, Respondent discharged 840 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, during an oil transfer into a Flying J tanker truck located at 1440 East Bastanchury Rd., Fullerton, CA into a storm drain and from there into a flood control channel that flows into the Santa Ana River.

5. The flood control channel that flows into the Santa Ana 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.

6. Respondent's August 29, 2006 discharge of oil during an oil transfer into a Flying J tanker truck located at 1440 East Bastanchury Rd., Fullerton, CA caused a sheen upon or discoloration in the flood control channel that flows into the Santa Ana River.

7. Respondent's discharge of oil during an oil transfer into a Flying J tanker truck located at 1440 East Bastanchury Rd., Fullerton, CA into a flood control channel that flows into the Santa Ana River occurred in a quantity that has been determined may be harmful, violated Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3). Pursuant to Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), as adjusted in accordance with 40 C.F.R. § 19.4, the Respondent is liable for civil penalties of up to \$11,000 per barrel of oil discharged, up to a maximum of \$32,500.

### CERTIFICATION OF SERVICE

I certify that the original and the foregoing Expedited Spill Settlement Agreement in the matter of **Flying J, Inc., OPA-9-2007-** , has been filed with the Region 9 Hearing Clerk and that copies were sent return receipt requested to the following:

Mr. Zane Atkinson  
Flying J, Inc.  
1104 Country Hills Drive  
Ogden, UT 84403

Certified Mail No.:  
7005 2570 0001 6436 9120

Date: 2/9/07

Danielle E. Carr  
Danielle Carr  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105