

EFF 3 2010.

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

DOCKET NO. CWA-04-2010-5005

On: September 1, 2009 Time: 15:45
On: or near Highway 411, in Jefferson County, Tennessee, Pemberton Truck Lines, Inc. (Respondent) discharged an estimated 100 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.

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

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 CFR § 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.

After this Expedited Spill Settlement Agreement becomes effective, 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, 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, EPA ratifies the Findings and Alleged Violation set forth in the Form.

EPA is authorized to enter into this Expedited Spill 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 CFR § 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 binding on the parties signing below, and effective upon 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 30 days of the date of its receipt, the proposed Expedited Spill Settlement Agreement is withdrawn without prejudice to EPA's ability to file any other enforcement action for the violation identified in the Form.

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 \$17,000.00, 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 7 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.

APPROVED BY RESPONDENT:

Name (print): Preston M. Curraing
Title (print): Director of Safety
Signature: [Signature]

RECEIVED
MARCH 17 10 08 AM '10
RCRA/OPA ENFORCEMENT & COMPLIANCE BRANCH
RCRA DIVISION

APPROVED BY EPA:

[Signature] Date 3/9/2010
Caroline Y. F. Robinson, Chief
RCRA/OPA Enforcement & Compliance Branch
RCRA Division

IT IS SO ORDERED:

[Signature] Date 3/16/10
Susan B. Schub
Regional Judicial Officer

ALLEGED CIVIL VIOLATION - DOCKET NO. CWA-04-2010-5005

1. Pemberton Truck Lines, Inc., Respondent, is a corporation organized under the laws of Tennessee with a place of business located at 2530 Mitchell Street, Knoxville, Tennessee 37917. 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 and trailer located on or near Highway 411 in Jefferson County, Tennessee. ("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 September 1, 2009, Respondent discharged an estimated 100 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 or upon the unnamed creek flowing into Indian Creek which is tributary to the French Broad River and adjoining shorelines.
6. The unnamed creek which flows into the Indian Creek which is tributary to the French Broad River is a "navigable water of the United States" 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 September 1, 2009, discharge of oil from its facility caused a sheen upon or discoloration of the surface or the adjoining shoreline of the unnamed 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.

ALLEGED CIVIL VIOLATION - DOCKET NO. CWA-04-2010-5005 (Cont'd)

8. Respondent's September 1, 2009, discharge of oil from its facility into or upon the unnamed 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-04-2010-5005

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached Consent Agreement and Final Order, in the Matter of Pemberton Truck Lines, Inc., Docket No. CWA-04-2010-5005 (filed with the Regional Hearing Clerk on MAR 17 2010, 2010) was served on MAR 17 2010, 2010, in the manner specified to each of the person set forth below:

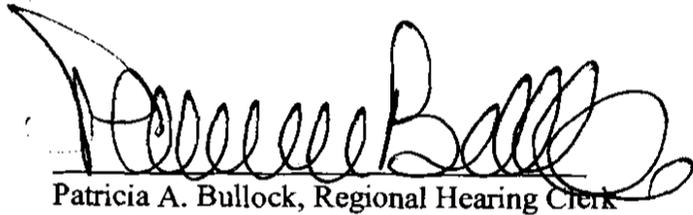
Mr. Preston Cunningham
Director of Safety
Pemberton Truck Lines, Inc,
2530 Mitchell Street
Knoxville, Tennessee 37917

CERTIFIED MAIL
Return Receipt Requested

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

Via EPA's Internal Mail

Date: 3-17-10



Patricia A. 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

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 February 8, 2010
(Name) (Date)

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

- | | |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree
USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree
DOJ COLLECTS | <input type="checkbox"/> Oversight Billing - Cost Package required:
Sent with bill |
| <input type="checkbox"/> Other Receivable | <input type="checkbox"/> Not sent with bill |
| <input type="checkbox"/> This is an original debt | <input type="checkbox"/> Oversight Billing - Cost Package not required |
| | <input type="checkbox"/> This is a modification |

PAYEE: Pemberton Truck Lines, Inc,

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-04-2010-5005
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: _____

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) |
|--|---|