



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 7
11201 Renner Blvd, Lenexa, Kansas 66219

OIL SPILL EXPEDITED SETTLEMENT AGREEMENT

Received by
EPA Region 7
Hearing Clerk

IN THE MATTER OF:

Kenneth E. Foeste Masonry, Inc.,

Respondent

DOCKET NO.: CWA-07-2022-0140
Oil Spill Expedited Settlement Agreement
Pursuant to CWA Section 311(b)(6)(B)(i)

On March 29, 2022, Kenneth E. Foeste Masonry, Inc., (Respondent), discharged approximately two barrels of oil from its facility located at 2526 Big Bend Road, Cape Girardeau, Missouri (the Facility) into Juden Creek. The Facility is owned or operated by Respondent. Based on a National Response Center spill report submitted by Respondent and the attached Findings and Alleged Civil Violations, the discharge was a violation of Section 311(b) of the Clean Water Act and regulations promulgated thereunder at 40 C.F.R. Part 110.

The EPA finds Respondent's conduct is subject to Section 311 (b)(3) of the Clean Water Act and the Discharge of Oil regulations and Respondent has violated these authorities. Respondent admits being subject to the CWA § 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). Respondent also admits that the EPA has jurisdiction over Respondent and Respondent's conduct. Respondent does not contest the EPA findings, and neither admits nor denies the allegation.

The EPA is authorized to enter into this Expedited Settlement Agreement (ESA) under the authority vested in the Administrator of the EPA by CWA § 311(b)(6)(B)(i), 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) and § 22.18(b)(2)-(3). The parties enter into this ESA to settle the violation for a penalty of \$500.00. Respondent consents to the assessment of this penalty.

This ESA 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 the violations have been corrected and Respondent is in compliance with the CWA. Respondent agrees to receipt of this ESA at the email address provided herein and to pay the penalty assessed within thirty (30) calendar days of that the effective date of this ESA. Instructions for making the penalty payment are enclosed with this ESA.

After the parties sign this ESA and Respondent pays the civil penalty, the EPA will take no further action against Respondent for the violation cited herein. However, the EPA does not waive any rights to take enforcement action for any other violations by

Respondent of the CWA or of any other federal statute or regulation. Upon signing and returning this ESA to the EPA, Respondent waives any right to judicial review under CWA § 311(b)(6)(G), 33 U.S.C. § 1321(b)(6)(G), any right to appeal or request a hearing to contest any fact or allegation, and consents to the EPA's approval of the ESA without further notice. Failure by Respondent to pay the penalty assessed by this ESA 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 CWA § 311(b)(6)(H), 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

This ESA is binding on the parties signing below. Each person signing this ESA certifies that he or she has the authority to sign for the party who he or she represents and to bind that party to its terms. The ESA is effective upon the EPA's filing of the ESA with the Regional Hearing Clerk. If Respondent does not sign and return this ESA as presented within thirty (30) calendar days of the date of its receipt, the proposed ESA will be withdrawn without prejudice to the EPA's ability to file any other enforcement action for the noncompliance identified in the Violations Form, unless an extension has been granted by EPA.

APPROVED BY RESPONDENT:

Name (print): Kenneth E Foeste

Title (print): Owner

Email Address: Judy@FoesteMasonry.com

Signature: Kenneth E. Foeste Date: 10/20/22

The estimated cost for correcting the violation(s) is:

\$ 500.00

APPROVED BY EPA:

_____ Date: _____
David Cozad
Director
Enforcement and Compliance Assurance Division

FINAL ORDER
IT IS SO ORDERED:

_____ Date: _____
Karina Borrromeo
Regional Judicial Officer

Effective Date: See Notice of Filing for Effective Date