



**EXPEDITED SPCC SETTLEMENT AGREEMENT**  
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 7, 901 N. 5<sup>th</sup> ST., KANSAS CITY, KANSAS 66101**

09 MAY 29 AM 11:33

**DOCKET NO. CWA-07-2009-0047**

ENVIRONMENTAL PROTECTION  
 AGENCY REGION VII  
 REGIONAL HEARING CLERK

On 6/8/08

At: 1995 York Avenue, Provitin, IA

Owned or operated by Fencl Oil discharged 1,200 gallons of oil in violation of regulations promulgated at 40 C.F.R. Part 112 under Section 311(b)(3) of the Clean Water Act as noted on the attached FINDINGS AND ALLEGED VIOLATIONS FORM, (Form), which is hereby incorporated by reference.

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, and consents to EPA's approval of the Expedited Settlement without further notice.

This proceeding and the Expedited Settlement are 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 Expedited Settlement in order to settle the civil violations described in the Form for a penalty of \$3,000.

This Expedited Settlement is binding on the parties signing below, and is effective upon the Regional Judicial Officer's signature.

This settlement is subject to the following terms and conditions:

Respondent consents to the assessment of the penalty stated above. 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 has sent a certified check in the amount of \$3,000, payable to the "Environmental Protection Agency," via certified mail to:**

U.S. Environmental Protection Agency  
 P.O. Box 979077  
 St. Louis, MO 63197-9000

and Respondent has noted on the penalty payment check Docket No. CWA-07-2009-0047 and "OSLTF - 311." **The original, signed Settlement Agreement and copy of the penalty payment check must be sent via certified mail to:**

Paula Higbee  
 U.S. Environmental Protection Agency  
 Region 7, AWMD/STOP  
 901 N. 5<sup>th</sup> Street  
 Kansas City, KS 66101

This Expedited Settlement resolves Respondent's liability for Federal civil penalties for the violations of the oil spill regulations 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 Respondent of the SPCC regulations or of any other federal statute or regulations. By its first signature, EPA ratifies the Findings and Alleged Violations set forth in the Form.

APPROVED BY EPA:

Stanley Walker Date 5/7/09  
 Chief, Storage Tank and Oil Pollution Branch (STOP)  
 Air and Waste Management Division

APPROVED BY RESPONDENT:

Name (print): FENCL OIL - KEN FENCL  
 Title (print): PRESIDENT  
 Signature: [Signature]  
 Date: 4-27-09

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

\$ 3000<sup>00</sup>

IT IS SO ORDERED:

Robert L. Patrick Date May 29, 2009  
 Robert L. Patrick  
 Regional Judicial Officer

## FINDINGS AND ALLEGED CIVIL VIOLATIONS

1. Fencil Oil and L.P. Company, Inc., is a corporation organized under the laws of Iowa with a place of business located at 1995 York. The Respondent is a person within the meaning of Section 311 (a)(7) of the Act, 33 U.S.C. §1321 (a)(7).
2. 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) of the Act, which is located on (respondent's premises or address) ('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 cause a film or a sheen upon or discoloration of the surface of the water or adjoining shoreline.
5. On 6/8/2008, respondent discharged 1,200 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 Bohemian Creek and adjoining shorelines.
6. Bohemian 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.
7. Respondent's 6/8/2008 discharge of oil from its facility caused a sheen upon or discoloration of the surface of the Bohemian Creek and the adjoining shoreline and therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. §110.3, which implements Sections 311(b)(3) and (b)(4) of the Act.
8. Respondent's 6/8/2008 discharge of oil from its facility into or upon Bohemian 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 from civil penalties of up to \$12,000 per violation, up to a maximum of \$31,500.

IN THE MATTER OF FencI Oil, Respondent  
Docket No. CWA-07-2009-0047

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Expedited SPCC Settlement Agreement was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Howard Bunch  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

FencI Oil  
1995 York Avenue  
Provitin, Iowa 52163

Dated: 5/29/09



Kathy Robinson  
Hearing Clerk, Region 7