



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

OCT 14 2008

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Joel Smithgall
Property Manager
JFS Properties, Inc.
4470 Chamblee Dunwoody Road
Suite 290
Atlanta, Georgia 30338

RE: Consent Agreement and Final Order
Docket No. CWA-04-2008-5149(b)

Dear Mr. Smithgall:

Enclosed is a copy of the Consent Agreement and Final Order (CAFO) in this matter that has been filed with the Regional Hearing Clerk and served on the parties as required by 40 C.F.R. § 22.6.

The total amount of the civil penalty is dollars (\$25,000.00) to be paid within thirty (30) days of the effective date of the CAFO. We request the payment be identified by writing the Docket Number on the face of the check.

Your attention is directed to Section 311(b)(6)(H), of the Act, 33 U.S.C. § 1321, which provides for recovery of civil penalties by the U.S. Attorney General in case of failure of a Respondent to pay the same. Should it become necessary to file an action for collection in U.S. District Court, the amount of the unpaid penalty will be sought plus interest, penalty, and administrative costs that have accumulated.

Should you have any questions about your company's compliance status in the future, please do not hesitate to call me at (404) 562-9569.

Sincerely,

Catherine Winokur
Catherine Winokur, Esq.
Associate Regional Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

IN THE MATTER OF)	
	)	CWA SECTION 311 CLASS II
	)	CONSENT AGREEMENT
JFS Properties, Inc.	)	AND FINAL ORDER
400 Boundary Street	)	UNDER 40 C.F.R. § 22.13(b)
Salisbury, NC)	
Respondent	)	Docket No. CWA-04-2008-5149(b)

RECEIVED
 EPA REGION IV
 2009 OCT 14 AM 10: 24
 HEARING CLERK

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(ii) of the Clean Water Act ("Act"), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 4, who has in turn delegated them to the RCRA Division Director.

CONSENT AGREEMENT

Stipulations

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

1. Respondent, JFS Properties, Inc., is a corporation organized under the laws of Georgia and registered to do business in the State of North Carolina. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 110.1.

2. The Respondent is the operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 110.1 of a textile mill facility located at 400 Boundary Street in Salisbury, NC ("the facility").

3. The facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

4. Respondent was required by EPA to address asbestos and poly chlorinated bi-phenols (PCBs) contamination at the facility. As a result, Respondent removed friable asbestos and eight roll-off boxes of PCB contaminated soil from the facility and sent it to an appropriate disposal facility, at the direction of EPA's on-scene coordinator.

5. Tar Creek Branch is a navigable water 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.

6. 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.

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

8. Respondent admits the jurisdictional statements contained herein.

Allegations

Complainant alleges, and Respondent neither admits nor denies, that:

9. On or about July 15, 2007, Respondent discharged 8,000 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 Tar Branch Creek and/or its adjoining shorelines.

10. Respondent's July 15, 2007 discharge of oil from its facility caused a sheen upon or discoloration of the surface of the Tar Branch Creek and/or its adjoining shoreline and/or a sludge or emulsion to be deposited beneath the surface of the Tar Branch Creek, and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R § 110.3, in violation of Section 311(b)(3) of the Act.

Waiver of Rights

11. Respondent waives the right to contest the allegations contained herein; the right to a hearing under Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii); to appeal any Final Order in this matter under Section 311(b)(6)(G)(ii) of the Act; 33 U.S.C. § 1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

Penalty

12. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of Twenty-five Thousand Dollars (\$25,000).

Payment Terms

Based on the foregoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

13. No later than 30 days after the effective date of the Final Order, Respondent shall pay the amount of \$25,000 by means of a corporate cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, Respondent shall submit a corporate cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311." If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

US Environmental Protection Agency
Fines and Penalties
PO Box 979077
St. Louis, MO 63197-9000

If Respondent sends payment by wire transfer, the payment shall be addressed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

(Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency")

If Respondent sends payment by overnight mail, the payment shall be addressed to the U.S. Bank of Saint Louis, Missouri.

OVERNIGHT MAIL
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson 314-418-4087

If Respondent sends payment by remittance express l, the payment shall be addressed to the ACH (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

If Respondent sends an online payment, follow the instructions on the website listed below:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open form and complete required fields.

14. If paying by check, Respondent shall note on the penalty payment check the title and docket number of this case. Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the following people:

Patricia Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 4
SNAFC
61 Forsyth Street, SW
Atlanta, GA 30303

Douglas McCurry, Chief
North Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. Environmental Protection Agency
Region 4
SNAFC
61 Forsyth Street, SW
Atlanta, GA 30303

15. Respondent's failure to pay the penalty assessed by the Final Order 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 Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

General Provisions

16. Complainant reserves the right, pursuant to 40 CFR § 22.45(c)(4)(iii), to withdraw this Consent Agreement and proposed Final Order within 15 days of receipt of a Commenter's petition requesting, pursuant to 40 CFR § 22.45(c)(4)(ii), that the Regional Administrator set

aside the Consent Agreement and proposed Final Order on the basis that material evidence was not considered.

17. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

18. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated hereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations stipulated to and alleged herein.

19. Nothing in this CA/FO shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for Respondent's violation of any applicable provision of law, except for those violations specifically alleged in this CA/FO.

Effective Date

20. This Consent Agreement and attached Final Order is effective upon the filing of the Final Order with the Regional Hearing Clerk.

For: JFS PROPERTIES, INC.

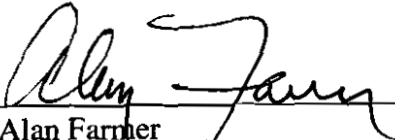
By: _____

Its: _____

Date: 7/25/08

In the matter of
JFS Properties, Inc.
Docket No. CWA-04-2008-5149(b)

For:
US Environmental Protection Agency



G. Alan Farmer
RCRA Division

Date: 8/6/08

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

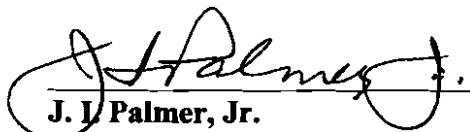
IN THE MATTER OF)	
	)	CWA SECTION 311 CLASS I
	)	CONSENT AGREEMENT AND
JFS Properties, Inc.	)	FINAL ORDER
400 Boundary Street	)	UNDER 40 C.F.R. § 22.13(b)
Salisbury, NC)	
)	
Respondent	)	Docket No. CWA-04-2008-5149(b)

FINAL ORDER

Pursuant to Section 311(b)(6) of the Clean Water Act, 33 U.S.C. § 1321(b)(6), and the delegated authority of the undersigned, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties and Allegations by Complainant are adopted as Findings in this Final Order.

JFS Properties, Inc., Respondent, is ordered to comply with the terms of the Consent Agreement, Docket No. CWA-04-2008-5149(b)

Date: OCT 08 2008


J. J. Palmer, Jr.
Regional Administrator

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the matter of JFS Properties Inc., Docket No. CWA-04-2008-5149(b) on the parties listed below in the manner indicated:

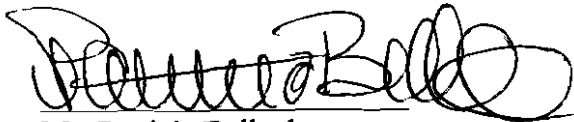
Cathy Winokur, Esq.
Associate Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street
Atlanta, Georgia 30303

(Via EPA's internal mail)

May Wall, Esq.
Winston & Strawn LLP
1700 K Street N.W.
Washington, DC 20006-3817

(Via U.S. certified mail)

Dated this 14 day of October, 2008.



Ms. Patricia Bullock
Regional Hearing Clerk
U.S. EPA - Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960