



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

IN THE MATTER OF:

Swain Construction, Inc.,

Respondent

DOCKET NO.: CWA-07-2020-0151

SPCC Expedited Settlement Agreement
Pursuant to CWA Section 311(b)(6)(B)(i)

On September 27, 2020, an authorized representative of the United States Environmental Protection Agency (EPA) issued a § 308 Information Request to the facility located at 6002 North 89th Circle, Omaha, Nebraska (the Facility), Swain Construction, Inc., (Respondent), to determine compliance with the Spill Prevention, Control, and Countermeasure (SPCC) regulations promulgated at 40 C.F.R. Part 112 under the Clean Water Act (CWA) § 311(j), 33 U.S.C. § 1321(j). Based on the responses to that information request, EPA finds that Respondent has failed to comply with the SPCC regulations as described on the attached "Spill Prevention, Control, and Countermeasure Inspection, Findings, Alleged Violations and Proposed Penalty Form" (Violations Form), which is incorporated by reference.

EPA finds Respondent's conduct is subject to the SPCC regulations and Respondent has violated the SPCC regulations as described in the Violations Form. Respondent admits being subject to the CWA § 311(b)(3) and 40 C.F.R. Part 112. Respondent also admits that EPA has jurisdiction over Respondent and Respondent's conduct as described in the Violations Form. Respondent does not contest the findings, and neither admits nor denies the allegations in the Violations Form.

EPA is authorized to enter into this Expedited Settlement Agreement (ESA) under the authority vested in the Administrator of 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 civil violations described in the Violations Form for a penalty of \$2,288. 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 40 C.F.R. Part 112. Respondent agrees to pay the penalty assessed within thirty (30) calendar days of receiving written notice that the ESA has been executed and is effective. Instructions for making the penalty payment are enclosed with this ESA. Respondent agrees to service of this ESA by email.

After the parties sign this ESA and Respondent pays the civil penalty, EPA will take no further action against Respondent for

the violations of the SPCC regulations described in the Violations Form. However, EPA does not waive any rights to take enforcement action for any other violations by Respondent of the SPCC regulations or of any other federal statute or regulation. Upon signing and returning this ESA to 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 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 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 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): Greg Armstrong

Title (print): President

Email address: greg@swainomaha.com

Signature: [Handwritten Signature] Date: 7-17-20

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

\$ 2288.00

APPROVED BY EPA:

_____ Date _____
David Cozad
Director
Enforcement and Compliance Assurance Division

FINAL ORDER
IT IS SO ORDERED:

_____ Date _____
Karina Borromeo
Regional Judicial Officer

Effective Date: See Notice of Filing for Effective Date