

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
PHILADELPHIA, PA 19103-2029

EXPEDITED PENALTY ACTION
AND CONSENT AGREEMENT
DOCKET NO. CWA-03-2009-0026

RESPONDENT
Diamond Materials
924 S. Heald Street
Wilmington, DE 19801

FACILITY
Diamond Materials
924 S. Heald Street
Wilmington, DE 19801

On **October 23, 2007**, an authorized representative of the United States Environmental Protection Agency (EPA) conducted an inspection of Respondent's facility known as **Diamond Materials** at **924 S. Heald Street in Wilmington, DE** to determine compliance with the Oil Pollution Prevention regulations promulgated at 40 CFR Part 112 under Section 311(j) of the Clean Water Act, as amended, (33 U.S.C. §1321(j)), (the "Act"). The EPA representative found that Respondent had violated the regulations by failing to comply with the specific regulatory requirements noted on the attached OIL POLLUTION PREVENTION INSPECTION FINDINGS, ALLEGED VIOLATIONS AND PROPOSED PENALTY FORM (the "Form"), which is hereby incorporated by reference.

The parties enter into this Expedited Penalty Action to settle the civil violations set forth above for a penalty of **\$550.00**. This Expedited Penalty Action commences and concludes this action pursuant to Sections 22.13(b), and 22.18(b)(2), and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice), 40 CFR §§ 22.13(b), and 22.18(b)(2), and (3). This Expedited Penalty Action and Consent Agreement is being entered into by the United States Environmental Protection Agency, Region III (EPA), by its duly delegated official, the Director, Hazardous Site Cleanup Division, and by Respondent pursuant to Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. §1321(b)(6)(B)(i), and by 40 CFR § 22.13(b).

The settlement is subject to the following terms and conditions.

EPA hereby finds the Respondent is subject to the Oil Pollution Prevention regulations and has violated the regulations as further described in the Form.

The Respondent consents to the assessment of the penalty stated above. Respondent certifies, subject to civil and criminal penalties for making a false statement to the United States Government, that the violations set forth in the Oil Pollution Prevention Inspection Findings, Alleged Violations and Proposed Penalty Form have been corrected. The Respondent agrees that it shall, within 15 calendar days of receipt of an executed copy of this Expedited Penalty Action, make payment of **\$ 550.00** in one of two forms: 1) electronic funds transfer (EFT) or 2) a cashier's check or certified check payable to the "Environmental Protection Agency", with the Docket Number, located at the top right-hand corner of the Expedited Penalty Action, and "Oil Spill Liability Trust Fund - 311" referenced on the check.

Payment of the penalty amount by EFT to:

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"

Payment of the penalty amount by regular US Postal Service shall be sent via certified mail to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Payment of the penalty amount by overnight mail (FedEx or other non-US Postal Service express mail) shall be sent to:

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

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EPA REGION III PHILA, PA

The Respondent shall also send a copy of the EFT confirmation or check via certified mail to:

Arlin Galarza-Hernández, SPCC/FRP Inspector
U.S. Environmental Protection Agency, Region III
Oil & Prevention Branch (3HS61)
1650 Arch Street
Philadelphia, PA 19103-2029

Lydia Guy, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III
1650 Arch Street (3RC00)
Philadelphia, PA 19103-2029

The payment made pursuant to this Expedited Penalty Action is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. §162(f), and, therefore, Respondent shall not claim it as a tax deductible expenditure for purposes of federal, state or local law.

This Expedited Penalty Action resolves only the civil claims for the specific violations alleged in the attached Oil Pollution Prevention Inspection Findings, Alleged Violations and Proposed Penalty Form. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Act, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Expedited Penalty Action, following its filing with the Regional Hearing Clerk.

EPA specifically reserves the right, without limitation, to any of the rights reserved herein, to bring any administrative, civil, or criminal action seeking imposition of further civil penalties, criminal sanctions, and/or injunctive relief in the event Respondent fails to correct the violations identified in the Form within the time allowed for in this Expedited Penalty Action.

Respondent neither admits nor denies the allegations set forth in the Form, but agrees that jurisdiction has been established for this Expedited Penalty Action. Also, upon EPA's final approval of the Expedited Penalty Action, Respondent expressly waives its right to contest the allegations, to a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. §1321(b)(6)(B)(i), and to appeal this Order under Section 311(b)(6)(G)(i) of the Act, 33 U.S.C. §1321(b)(6)(G)(i). Moreover, in entering into this Consent Agreement, the Respondent agrees to bear its own costs and attorney's fees related to this Expedited Penalty Action.

If Respondent does not sign and return this Expedited Settlement as presented within 30 days of the date of its receipt, the proposed Expedited Settlement is withdrawn without prejudice to EPA's ability to file any other enforcement action for the violations identified in the Form.

ACCEPT THE PROPOSED PENALTY

I/we consent to the proposed penalty.

DECLINE THE PROPOSED PENALTY

I/we decline the proposed penalty. If you choose to decline this proposed penalty, you may be subject to formal enforcement action and, in that event, will have an opportunity to a hearing related to any subsequent penalty assessment.

COST OF COMPLIANCE

Respondent certifies that it has expended \$ 5,800 to correct the alleged violations and to come into compliance.

EFFECTIVE DATE

This Expedited Penalty Action will be effective upon filing.

The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to execute this Expedited Penalty Action and Consent Agreement and to legally bind the party whom he or she represents thereto.

Respondent

Signature [Signature] Date 12/16/08
Name and Title (print) Paul Lester Superintendent

SIGNATURE BY COMPLAINANT:

[Signature] Date 1/12/09
James J. Burke, Director
Hazardous Site Cleanup Division

FINAL ORDER:

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. §1321(b)(6), and in accordance with the Consolidated Rules of Practice, 40 CFR Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into the Final Order. The Respondent is Ordered and agrees to pay the civil penalty set forth above.

[Signature] Date 1/26/09
Renee Sarajian,
Regional Judicial Officer