

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for

Toni Bandrowicz
Name of Case Attorney

3/26/15
Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number CWA-01-2015-0036

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Mirabito Holding, Inc. d/b/a
DJ Oil Express
18 Crystal Street
Lenox Dale, MA 01242

Total Dollar Amount of Receivable \$ 3,000 Due Date: _____

SEP due? Yes _____ No _____ Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1st \$ _____ on _____

2nd \$ _____ on _____

3rd \$ _____ on _____

4th \$ _____ on _____

5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office

Phone Number



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

VIA HAND-DELIVERY

March 26, 2015

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency – Region 1
5 Post Office Square, Suite 100
Mail Code ORA18-1
Boston, MA 02109-3912

RECEIVED

MAR 26 2015

EPA ORC
Office of Regional Hearing Clerk

Re: In the Matter of Mirabito Holdings, Inc., d/b/a D.J. Oil Express., Lenox Dale, Massachusetts 01242; CWA-01-2015-0036

Dear Ms. Santiago,

Enclosed for filing, please find an Expedited Settlement Agreement (ESA) settling the matter referenced above.

Pursuant to EPA Order Classification No. 2551.1A, dated June 7, 2006, the Regional Hearing Clerk (RHC) shall send a copy of the ESA in any Clean Water Act (CWA) case assessing a penalty under the authority of Section 311 of the CWA to:

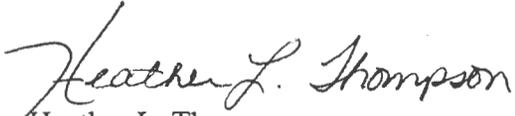
U.S. EPA
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-002)
Cincinnati, OH 45268

In addition, the RHC must pass along the name and address of the regional attorney responsible for any collection recommendation if the civil debt becomes delinquent. For this case, the responsible attorney is:

Tonia Bandrowicz
Senior Enforcement Counsel
U.S. Environmental Protection Agency – Region 1
5 Post Office Square, Suite 100
Mail Code OES04-3
Boston, MA 02109-3912
Tel: (617) 918-1734

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Heather L. Thompson". The signature is written in black ink and is positioned above the printed name.

Heather L. Thompson
OES Legal Office

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1, 5 POST OFFICE SQUARE, BOSTON, MASSACHUSETTS 02109-3912

EXPEDITED SPCC SETTLEMENT AGREEMENT

Docket No. CWA-01-2015-0036

On September 10, 2014, an authorized representative of the United States Environmental Protection Agency ("EPA") conducted an inspection at Mirabito Holdings, Inc. d/b/a D.J. Oil Express ("Respondent"), located at 18 Crystal Street, Lenox Dale, Massachusetts 01242 to determine compliance with the Oil Pollution Prevention regulations promulgated at 40 C.F.R. part 112 under Section 311(j) of the Clean Water Act (the "Act"), 33 U.S.C. § 1321(j). EPA determined that Respondent, as owner or operator of the facility, violated regulations implementing Section 311(j) of the Act by failing to comply with the Oil Pollution Prevention regulations as noted on the attached Spill Prevention Control and Countermeasure Plan ("SPCC") Inspection Findings and Violations Form ("Violations Form") which is hereby incorporated by reference. By its first signature below, EPA ratifies the Inspection Findings and Violations set forth in the Violations Form.

The parties enter into this Expedited Settlement in order to settle the civil violations described in the Violations Form for a penalty of \$3,000. The parties are authorized to enter into this Expedited Settlement under the authority of Section 311(b) (6) (B) (i) of the Act, 33 U.S.C. § 1321(b) (6) (B) (i), and by 40 C.F.R. § 22.13(b).

This settlement is subject to the following terms and conditions:

EPA finds the Respondent is subject to the Oil Pollution Prevention regulations, and has violated the regulations as further described in the Violations Form. Respondent admits it is subject to the Oil Pollution Prevention regulations and that EPA has jurisdiction over Respondent and Respondent's conduct as described in the Violations Form. Respondent admits to the facts in the first paragraph of this Settlement Agreement, and waives any objections it may have to EPA's jurisdiction. Respondent consents to the assessment of the penalty stated above.

Respondent further certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the violations identified in the Violations Form have been corrected and the facility is now in full compliance with the Oil Pollution Prevention regulations (or that the violations will be corrected and the facility brought in full compliance with the Oil Pollution Prevention regulations within an alternative time frame agreed to by EPA in writing). Respondent has sent a certified check in the amount of \$3,000, payable to the Environmental Protection Agency, to: U.S. Environmental Protection Agency, Fines and Penalties, P.O. Box 979077, St. Louis, MO 63197-9000. This check shall reference the docket number of the case and the "Oil Spill Liability Trust Fund - 311." Respondent shall send a copy of the check to Heather Thompson, Environmental Protection Agency, Region 1, 5 Post Office Square (OES04-4), Boston, Massachusetts 02109-3912, and to the Regional Hearing Clerk, Environmental Protection Agency, Region 1, 5 Post Office Square (ORC-18), Boston, Massachusetts 02109-3912.

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 Expedited Settlement is binding on the parties signing below, and is effective upon filing with the Regional Hearing Clerk pursuant to 40 C.F.R. § 22.31(b).

Once the Expedited Settlement is signed by the Regional Judicial Officer, the original Expedited Settlement will be filed with the Regional Hearing Clerk and a copy will be mailed to: U.S. EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive (MS-002), Cincinnati, OH 45268. A copy of the Expedited Settlement will also be mailed to the Respondent.

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 Violations Form.

After this Expedited Settlement becomes effective, EPA will take no further civil penalty action against Respondent for the violations of the Oil Pollution Prevention regulations described in the Violations Form through the order date of this Expedited Agreement. However, EPA does not waive any rights to take any enforcement action for any other past, present, or future violations by Respondent of the Oil Pollution Prevention regulations or of any other federal statute or regulations.

APPROVED BY EPA:

Joanna Jerison Date: 3/16/15
Joanna Jerison, Legal Enforcement Manager
Office of Environmental Stewardship

APPROVED BY RESPONDENT:

Name (print): Joseph Mirabito
Title (print): CEO/PRESIDENT
Signature: Joseph Mirabito Date: 3/17/15

IT IS SO ORDERED:

LeAnn Jensen Date: 3/23/15
LeAnn Jensen
Acting Regional Judicial Officer

RECEIVED

MAR 26 2015

EPA ORC WS
Office of Regional Hearing Clerk

RECEIVED

MAR 26 2015

EPA ORC
Office of Regional Hearing Clerk

**Oil Spill Prevention Control and Countermeasure
Inspection Findings and Violations Form**



Company Name:

Mirabito Holding, Inc. d/b/a D.J. Oil Express

Docket Number:

CWA-01-2015-0036

Facility Name:

S.A.A

Date of Inspection:

September 10, 2014

Address:

18 Crystal Street

City:

Lenox Dale

Inspector's Name:

Joseph Canzano, Oil Spill Prevention Compliance Coordinator

State:

MA

Zip Code:

01242

Enforcement Contact:

**Joseph Canzano, Oil Spill Prevention Compliance Coordinator
Tel: 617-918-1763**

Facility Contact:

George Mister, Facility Manager

Tel: 607-352-2811

Summary of Findings

On September 10, 2014, EPA conducted an inspection at the facility. At the time of the inspection, facility personnel were unable to produce for review the facility's most recent SPCC Plan. In addition, tank and piping inspections were not conducted in accordance with written procedures, employee training records were not maintained, and annual training was not conducted.

On October 1, 2014, the facility provided a response to EPA's September 10, 2014 inspection. On December 15, 2014, the facility provided a response to EPA's November 3, 2013, Request for Information. Since EPA's inspection the facility submitted an amended SPCC Plan (dated December 16, 2014), and instituted new inspection and employee training procedures.

The facility stores 62,160 gallons of oil (on-road diesel, No. 2 home heating) and includes a loading rack and dispenser stations. A discharge of oil from the facility has the potential to flow overland to a storm drain system which discharges in to the Housatonic River.

(Bulk Storage Facilities)

GENERAL TOPICS: 40 CFR 112.3(a), (d), (e); 112.5(a), (b), (c); 112.7 (a), (b), (c), (d)

- No Spill Prevention Control and Countermeasure Plan-112.3
- Plan not certified by a professional engineer- 112.3(d)
- Certification lacks one or more required elements - 112.3(d)(1)
- No management approval of plan- 112.7
- Plan not maintained on site (if manned at least four (4) hrs/day) or not available for review - 112.3(e)(1)
- The April 2011 SPCC Plan, stamped by Brent White with April 29, 2011 signature and September 2014 management signature, was not available for review at the time of EPA's September 10, 2014, inspection.*
- No evidence of five-year review of plan by owner/operator- 112.5(b)
- No plan amendment(s) if the facility has had a change in: design, construction, operation, or maintenance which affects the facility's discharge potential- 112.5(a)
- Amendment(s) not certified by a professional engineer- 112.5(c)
- Plan does not follow sequence of the rule and/or cross-reference not provided- 112.7
- Plan does not discuss additional procedures/methods/equipment not yet fully operational- 112.7
- Plan does not discuss alternative environmental protection to SPCC requirements- 112.7(a)(2)
- Plan has inadequate or no facility diagram- 112.7(a)(3)
- Inadequate or no listing of type of oil and storage capacity layout of containers- 112.7(a)(3)(i)
- Inadequate or no discharge prevention measures- 112.7(a)(3)(ii)
- Inadequate or no description of drainage controls- 112.7(a)(3)(iii)
- Inadequate or no description of countermeasures for discharge discovery, response and cleanup- 112.7(a)(3)(iv)
- Recovered materials not disposed of in accordance with legal requirements- 112.7(a)(3)(v)
- No contact list & phone numbers for response & reporting discharges- 112.7(a)(3)(vi)
- Plan has inadequate or no information and procedures for reporting a discharge- 112.7(a)(4)
- Plan has inadequate or no description and procedures to use when a discharge may occur- 112.7(a)(5)
- Inadequate or no prediction of equipment failure which could result in discharges- 112.7(b)
- Plan does not discuss and facility does not implement appropriate containment/diversionary structures/equipment- 112.7(c)

- If claiming impracticability of appropriate containment/diversionary structures:

- Impracticability has not been clearly denoted and demonstrated in plan- 112.7(d)
- No contingency plan- 112.7(d)(1)
- No written commitment of manpower, equipment, and materials- 112.7(d)(2)
- No periodic integrity and leak testing, if impracticability is claimed - 112.7(d)
- Plan has no or inadequate discussion of general requirements not already specified-112.7(j)

QUALIFIED FACILITY REQUIREMENTS: 112.6

- Qualified Facility: No Self certification- 112.6(a)(1)(Tier I) or (b)(1)(Tier II)
- Qualified Facility: Self certification lacks required elements- 112.6(a)(1)(Tier I) or (b)(1)(Tier II)
- Qualified Facility: Technical amendments not certified- 112.6(a)(2)(Tier I) or (b)(2)(Tier II)
- Qualified Facility: Un-allowed deviations from requirements- 112.6(a)(Tier I) or (b)(Tier II)
- Qualified Facility: Environmental Equivalence or Impracticability not certified by PE- 112.6(b)(3)(Tier II)

WRITTEN PROCEDURES AND INSPECTION RECORDS 112.7(e)

- Plan does not include inspections and test procedures in accordance with 40 CFR Part 112 - 112.7(e)
- Inspections and tests required are not in accordance with written procedures developed for the facility- 112.7(e)

Mirabito acquired operations in October 2012. Since October 2012, semi-annual audits/inspections were not documented using required document/form noted Exhibit A. and A.1 in April 2011 and December 12, 2014 SPCC Plans respectively.

Aboveground storage tank monthly visual inspection forms (both dated October 2, 2012, Berkley Specialty) do not contain the address of the facility's tanks being inspected.

Monthly monitoring reports for November 19, 2014, and December 16, 2014, reference NYCRR 613.6, State of New York Handling and Storage of Petroleum verse the Commonwealth of Massachusetts.

Inspection forms entitled "Monthly Tank and Fuel Truck Inspection Form" – Supervisor signature and time of inspection is not included on Forms. The Form is not included as an inspection form in the December 12, 2014 SPCC Plan.

- No inspection records available for review - 112.7(e)
- Are not signed by appropriate supervisor or inspector- 112.7(e)
- Are not maintained for three years- 112.7(e)

PERSONNEL TRAINING AND DISCHARGE PREVENTION PROCEDURES 112.7(f)

- No training on the operation and maintenance of equipment to prevent discharges and or facility operations - 112.7(f)(1)

- No training on discharge procedure protocols- 112.7(f)(1)
- No training on the applicable pollution control laws, rules, and regulations and/or SPCC plan- 112.7(f)(1)
- Training records not maintained for 3 years- 112.7(f)(1)

Mirabito acquired operations in October 2012. From October 2012 through October 2014 (24 months) record/documentation (as required by Exhibit C in April 2011 SPCC Plan) for spill prevention training were not maintained.

- No designated person accountable for spill prevention- 112.7(f)(2)
- Spill prevention briefings are not scheduled and conducted at least annually- 112.7(f)(3)

Mirabito acquired operations in October 2012. Spill prevention training was not conducted until October 16, 2014. In addition, the Security Plan and Risk Assessments (as required by Exhibit B in April 2011 SPCC Plan) not conducted/documented since Mirabito acquired operations.

- Plan has inadequate or no discussion of personnel and spill prevention procedures-112.7(a)(1)

SECURITY (excluding Production Facilities) 112.7(g)

- Master flow and drain valves that permit direct outward flow to the surface are not secured in closed position when in a non-operating or standby status- 112.7(g).
- Starter controls on pumps are not locked in the “off” position or located at a site accessible only to authorized personnel when pumps are not in a non-operating or standby status- 112.7(g)
- Loading and unloading connection(s) of piping/pipelines are not capped or blank-flanged when not in service or standby status- 112.7(g)
- Facility lighting not adequate to facilitate the discovery of spills during hours of darkness and to deter vandalism- 112.7(g)
- Plan has inadequate or no discussion of facility security-112.7(a)(1), (g)

FACILITY TANK CAR AND TANK TRUCK LOADING/UNLOADING 112.7(c) and/or (h-j)

- Inadequate containment for Loading Area (not consistent with 112.7(c)) - 112.7(c)
- Inadequate secondary containment, and/or rack drainage does not flow to catchment basin, treatment system, or quick drainage system- 112.7(h)(1)
- Containment system does not hold at least the maximum capacity of the largest single compartment of any tank car or tank truck- 112.7(h)(1)
- There are no interlocked warning lights, or physical barrier system, or warning signs, or vehicle brake interlock system to prevent vehicular departure before complete disconnect from transfer lines- 112.7(h)(2)
- There is no inspection of lowermost drains and all outlets prior to filling and departure of any tank car or tank truck- 112.7(h)(3)
- Plan has inadequate or no discussion of facility tank car and tank truck loading/unloading rack-112.7(a)(1)

QUALIFIED OIL OPERATIONAL EQUIPMENT 112.7(k)

- Failure to establish and document procedures for inspections or a monitoring program to detect equipment failure and/or a discharge- *112.7(k)(2)(i)*
- Failure to provide an oil spill contingency plan- *112.7(k)(2)(ii)(A)*
- No written commitment of manpower, equipment, and materials- *112.7(k)(2)(ii)(B)*

FACILITY DRAINAGE 112.8(b) & (c)

- Secondary Containment circumvented due to containment bypass valves left open and/or pumps and ejectors not manually activated to prevent a discharge- *112.8(b)(1)&(2) and 112.8(c)(3)(i)*
- Dike water is not inspected prior to discharge and/or valves not open & resealed under responsible supervision- *112.8(c)(3)(ii)&(iii)*
- Adequate records (or NPDES permit records) of drainage from diked areas not maintained- *112.8(c)(3)(iv)*
- Drainage from undiked areas do not flow into catchment basins ponds, or lagoons, or no diversion systems to retain or return a discharge to the facility- *112.8(b)(3)&(4)*
- Two "lift" pumps are not provided for more than one treatment unit- *112.8(b)(5)*
- Plan has inadequate or no discussion of facility drainage-*112.7(a)(1)*

BULK STORAGE CONTAINERS 112.8(c)

- Plan has inadequate or no risk analysis and/or evaluation of field-constructed aboveground tanks for brittle fracture - *112.7(i)*
- Failure to conduct evaluation of field-constructed aboveground tanks for brittle fracture- *112.7(i)*
- Material and construction of tanks not compatible to the oil stored and the conditions of storage such as pressure and temperature - *112.8(c)(1)*
- Secondary containment appears to be inadequate - *112.8(c)(2)*
- Containment systems, including walls and floors are not sufficiently impervious to contain oil - *112.8(c)(2)*
- Excessive vegetation which affects the integrity
- Walls of containment system slightly eroded or have low areas
- Completely buried tanks are not protected from corrosion or are not subjected to regular pressure testing - *112.8(c)(4)*
- Partially buried tanks do not have buried sections protected from corrosion- *112.8(c)(5)*
- Aboveground tanks are subject to visual inspections - *112.8(c)(6)*
- Aboveground tanks are subject to periodic integrity testing, such as hydrostatic, nondestructive methods, etc. - *112.8(c)(6)*

- Records of inspections (or customary business records) do not include inspections of tank supports/foundation, deterioration, discharges and/or accumulations of oil inside diked areas- 112.8(c)(6)
- Steam return /exhaust of internal heating coils which discharge into an open water course are not monitored, passed through a settling tank, skimmer, or other separation system- 112.8(c)(7)
- Tank battery installations are not in accordance with good engineering practice because none of the following are present- 112.8(c)(8)
- No testing of liquid level sensing devices to ensure proper operation- 112.8(c)(8)(v)
- Effluent treatment facilities which discharge directly to navigable waters are not observed frequently to detect oil spills- 112.8(c)(9)
- Causes of leaks resulting in accumulations of oil in diked areas are not promptly corrected- 112.8(c)(10)
- Mobile or portable storage containers are not positioned to prevent discharged oil from reaching Waters of the U.S. - 112.8(c)(11)
- Secondary containment inadequate for mobile or portable storage tanks- 112.8(c)(11)
- Plan has inadequate or no discussion of bulk storage tanks-112.7(a)(1)

FACILITY TRANSFER OPERATIONS, PUMPING, AND FACILITY PROCESS 112.8(d)

- Buried piping is not corrosion protected with protective wrapping, coating, or cathodic protection -112.8(d)(1)
- Corrective action is not taken on exposed sections of buried piping when deterioration is found- 112.8(d)(1)
- Not-in-service or standby piping are not capped or blank-flanged and marked as to origin- 112.8(d)(2)
- Pipe supports are not properly designed to minimize abrasion and corrosion, and allow for expansion and contraction- 112.8(d)(3)
- Aboveground valves, piping and appurtenances are not inspected regularly- 112.8(d)(4)
- Periodic integrity and leak testing of buried piping is not conducted- 112.8(d)(4)
- Vehicle traffic is not warned of aboveground piping or other oil transfer operations- 112.8(d)(5)
- Plan has inadequate or no discussion of facility transfer operations, pumping, and facility process-112.7(a)(1)
- Plan does not include a signed copy of the Certification of the Applicability of the Substantial Harm Criteria - 112.20(e)

End of Checklist.

MIRABITO HOLDINGS, INC.

0000000000000476133

476133

VENDOR I.D.	NAME	PAYMENT NUMBER	CHECK DATE				
TEMP000000033	U.S. ENVIRONMENTAL	0044442	03/19/2015				
UR VOUCHER NUMBER	INVOICE NUMBER	DESCRIPTION	DATE	AMOUNT	AMOUNT PAID	DISCOUNT	NET
10535	032356	CWA-01-2015-0036 OIL SPI	03/17/2015	\$3,000.00	\$3,000.00	\$0.00	\$3,000.00
		CWA-01-2015-0036 OIL SPILL		\$3,000.00	\$3,000.00	\$0.00	\$3,000.00

COMMENT

TO VERIFY AUTHENTICITY, SEE REVERSE SIDE FOR DESCRIPTION OF THE 13 SECURITY FEATURES



THE METROCENTER - 49 COURT ST.
P.O. BOX 5306
BINGHAMTON, NY 13902
TELEPHONE 807-352-2800

NBT Bank N.A.
52 South Broad St.
Norwich, NY 13815

No. 010897

CERTIFIED
Payable only as originally drawn
and when properly endorsed.

DATE
3/19/2015 **MAR 19 2015**

NBT Bank - Binghamton 316
Binghamton, NY

Joseph P. Mirabito
AUTHORIZED SIGNATURE
DO NOT DESTROY
VOID AFTER 60 DAYS

476133

50-361
213

AMOUNT
\$3,000.00

EXACTLY **3,000** Dollars **00** Cents

U.S. ENVIRONMENTAL
PROTECTION AGENCY

Joseph P. Mirabito
CHIEF EXECUTIVE OFFICER

⑈476133⑈ ⑆021303618⑆

⑈99999961⑈

In the Matter of Mirabito Holdings, Inc., d/b/a D.J. Oil Express
EPA Docket No. CWA-01-2015-0036

CERTIFICATE OF SERVICE

I certify that the foregoing Expedited Settlement Agreement was transmitted to the following persons, in the manner specified, on the date below:

Original and one copy
hand-delivered:

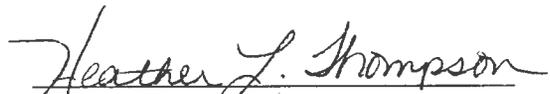
Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Copy by certified mail,
return receipt requested:

Mirabito Holdings, Inc.
d/b/a D.J. Oil Express
PO Box 5306
49 Court Street
Binghamton, NY 13902

Ann B. Cianflone, Esq.
General Counsel
Mirabito Holdings, Inc.
PO Box 5306
49 Court Street
Binghamton, NY 13902

Dated: 3/26/15


Heather Thompson
Office of Environmental Stewardship
U.S. Environmental Protection Agency,
Region I
5 Post Office Square, Suite 100
Boston, MA 02109-3912
Phone: (617) 918-1320
Fax: (617) 918-0320