



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9
75 HAWTHORNE STREET, SAN FRANCISCO, CALIFORNIA 94105
EXPEDITED DISCHARGE SETTLEMENT AGREEMENT

DOCKET NO.: OPA-09-²⁰⁰⁸⁻⁰⁰⁰²~~2007-0008~~

On: July 17, 2007

At: Marathon Packing Corporation
1000 Montague Ave
San Leandro, CA

Owned or Operated by: Marathon Packing Corporation
(Respondent)

Respondent discharged 3,130 gallons of oil in violation of Section 311(b)(3) of the Clean Water Act (the "Act"), as noted on the attached FINDINGS and ALLEGED CIVIL VIOLATIONS FORM (Findings), which is hereby incorporated by reference.

EPA finds that the Respondent is subject to the Act. EPA alleges, and Respondent neither admits nor denies, that Respondent discharged a harmful quantity of oil, as further described by 40 CFR § 110.3, into navigable waters of the United States or adjacent shorelines. The Respondent admits to being subject to the Act and that EPA has jurisdiction over the Respondent and jurisdiction over the Respondent's conduct as described in the Findings. Respondent waives any objections Respondent may have to EPA's jurisdiction.

EPA is authorized to enter into this Expedited Settlement 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 CFR § 22.13(b). The parties enter into this Expedited Settlement in order to settle the civil violations described in the Findings for a penalty of \$4,500.00. The Respondent consents to the assessment of this penalty.

This Expedited Settlement also is 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 it has investigated the cause of the spill, has cleaned up the spill pursuant to federal requirements, has taken any required corrective actions that will prevent future spills, and has sent a certified check in the amount of \$4,500.00, payable to the "Environmental Protection Agency," to: "U. S. Environmental Protection Agency, P.O. Box 371099M, Pittsburgh, PA 15251." Respondent has noted on the penalty payment check "Spill Fund - 311" and the document number of the settlement agreement.

This Expedited Settlement must be returned by certified mail to: OPA Enforcement Coordinator, U.S. Environmental Protection Agency, Region 9 (SFD-9-4), 75 Hawthorne Street, San Francisco, California 94105-3901. The certified check for payment must be sent by certified mail to: U. S. Environmental Protection Agency, P.O. Box 371099M, Pittsburgh, PA 15251.

After this Expedited Settlement becomes effective, EPA will take no further civil action against the Respondent for the violations of the Act described in the Findings. However, EPA does not waive any rights to take any enforcement action

for any other past, present, or future violations by the Respondent of the Act or of any other federal statute or regulations.

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, 33 U.S.C. § 1321, 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 after signature by the Regional Judicial Officer.

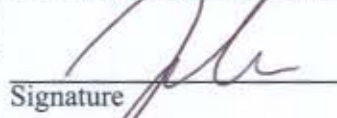
APPROVED BY EPA:

 Date: 11-13-07
Keith Takata, Director
Superfund Division

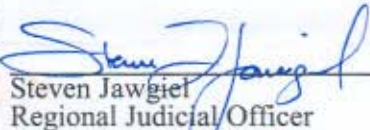
APPROVED BY RESPONDENT:

Name (print): JUSTIN CHAN

Title (print): OPERATIONS MANAGER

 Date 26 OCTOBER 2007
Signature

IT IS SO ORDERED:

 Date 11/16/07
Steven Jawgiel
Regional Judicial Officer

FILED
2007 NOV 16 AM 8:46
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING CLERK

FINDINGS AND ALLEGED CIVIL VIOLATIONS

1. Marathon Packing Corporation (Respondent) is a corporation organized under the laws of the state of California with a place of business located at 1000 Montague Ave, San Leandro, California. The Respondent is a person within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7) (the "Act").

2. 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.

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

4. On or about July 17, 2007, Respondent discharged 3,130 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 a parked truck trailer at Respondent's facility, when a 5,880-gallon bladder of olive oil fell because the asphalt under the trailer subsided. The oil discharged into an adjacent storm drain and traveled to and caused a sheen upon or discoloration into a tidally influenced flood control canal that leads to San Francisco Bay.

5. The tidally influenced flood control canal that leads to San Francisco Bay 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.

6. Respondent's July 17, 2007 discharge of oil in a quantity that EPA has determined may be harmful violated Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3). Pursuant to Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), as adjusted in accordance with 40 C.F.R. § 19.4, the Respondent is liable for civil penalties of up to \$11,000 per barrel of oil discharged, up to a maximum of \$32,500.

CERTIFICATION OF SERVICE

I certify that the original and the foregoing Expedited SPCC Settlement Agreement in the matter of **Marathon Packing Corp., OPA-09-2007-0008** has been filed with the Region 9 Hearing Clerk and that copies were sent return receipt requested to the following:

Mr. Justin Chan
Marathon Packing Corp.
1000 Montague Ave.
San Leandro, CA 94577

Certified Mail No.:
7005 2570 0001 6436 7775

Date: 11-20-07



Danielle Carr
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105