



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

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REGION 8 VLD
WARRANT OFFICE

DOCKET NO.: EPCRA-08-2008-0001

| | | |
|--------------------------------|---|--------------------|
| IN THE MATTER OF: |) | |
| |) | |
| BRANNAN SAND AND GRAVEL |) | FINAL ORDER |
| COMPANY |) | |
| 4045 Fox Street |) | |
| Denver, CO |) | |
| |) | |
| RESPONDENT |) | |

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 24th DAY OF October, 2007.



 Elyana R. Sutin
 Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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EPA REGION 8
HEADING CLERK

IN THE MATTER OF:)

Brannan Sand and Gravel)
Company)
4045 Fox Street)
Denver, CO 80216)

Respondent)

EXPEDITED SETTLEMENT AGREEMENT

(COMBINED COMPLAINT AND
CONSENT AGREEMENT)

DOCKET NO. : EPCRA-08-2008-0001

United States Environmental Protection Agency, Region 8 ("EPA" or "Complainant"), and Respondent, Brannan Sand and Gravel Company ("Respondent"), by their undersigned representatives, hereby consent and agree as follows:

PRELIMINARY STATEMENT

1. This matter is subject to 40 C.F.R. Part 22. This Expedited Settlement Agreement (also known as a "Combined Complaint and Consent Agreement," hereafter "the Agreement,") is entered into by the parties for the purpose of simultaneously commencing and amicably concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. EPA and Respondent agree that EPA has jurisdiction over this matter pursuant to section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045. The supervisors in the Legal Enforcement Program and the Technical Enforcement Program within the Office of Enforcement, Compliance and Environmental Justice, Region 8, EPA, have been delegated the authority, pursuant to applicable statute, to commence and conclude this matter.
3. Respondent agrees that EPA has jurisdiction and venue over the matters contained in this Agreement, however, Respondent neither admits nor denies EPA's specific factual allegations contained herein.

4. EPA and Respondent agree that settlement of this matter is in the public interest, and EPA and Respondent agree that execution of this Agreement and issuance of a Final Order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.

5. This Agreement contains all terms of the settlement agreed to by the parties.

GENERAL ALLEGATIONS

6. Brannan Sand and Gravel Company ("Respondent") is a "person" as that term is defined by section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

7. Respondent is an owner or operator of a "facility" as that term is defined in section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and which is located at 4045 Fox Street, Denver, Colorado.

8. On May 31, 2007, EPA Region 8 inspected Respondent's facility in Denver, Colorado, with Respondent's consent.

9. At all times relevant to this matter, the facility stored hazardous chemicals as defined by 29 C.F.R. § 1910.1200. Gasoline, diesel fuel, asphalt emulsion, asphalt, silica sand and aggregate are hazardous chemicals as defined by 29 C.F.R. § 1910.1200(c).

10. At all times relevant to this matter, the facility was required to prepare or have available a Material Safety Data Sheet ("MSDS") for each hazardous chemical used and stored at the facility. This requirement is found under the Occupational Safety and Health Act of 1970 and the regulations promulgated under that Act.

11. Respondent, as a facility, is required to file an annual Tier II inventory report for hazardous chemicals stored in excess of established thresholds. Such thresholds are located at 40 C.F.R. § 370.20(b).

ALLEGED VIOLATIONS

Failure to File Tier II Forms for hazardous chemicals stored on site for calendar years 2004, 2005, and 2006

Paragraphs 1 - 11 of the PRELIMINARY STATEMENT and GENERAL ALLEGATIONS are incorporated by this reference and set out as if fully stated herein.

12. EPA alleges that Respondent, owner and operator of the facility at 4045 Fox Street, Denver, Colorado, failed to timely file completed emergency and hazardous chemical inventory forms (Tier II form as described in 40 C.F.R. § 370.25 and 40 C.F.R. § 370, Subpart D) for

gasoline, diesel fuel, asphalt emulsion, asphalt and silica sand and aggregate for the years 2004, 2005 and 2006, as required by § 312 of EPCRA, 42 U.S.C. § 11022, and the regulations set forth at 40 C.F.R. § 370.

13. Under section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations at 40 C.F.R. § 370, Respondent was required to submit its Tier II forms for the years 2004, 2005, and 2006 on or before March 1, 2005, 2006, and 2007 of each year, respectively.

14. EPA therefore alleges violations of the requirements of reporting under section 312 of EPCRA, 42 U.S.C. § 11022 and the assessment of penalties under section 325 of EPCRA, 42 U.S.C. § 11045.

TERMS OF SETTLEMENT

15. Respondent agrees to achieve compliance with the requirements that formed the basis of the alleged violations in this matter within 20 days after the Final Order is issued herein.

16. Pursuant to section 325 of EPCRA, 42 U.S.C. § 11045, and based in part on the nature of the alleged violations and other relevant factors, EPA agrees that an appropriate civil penalty to settle this matter is TWO THOUSAND DOLLARS (\$2,000).

17. Respondent consents, for the purpose of settlement, to the issuance of a Final Order and the payment of the civil penalty cited in the foregoing paragraph.

18. Respondent agrees and acknowledges that any and all payments made as a part of this agreement are ineligible for any kind of favorable tax treatment.

19. Within twenty days (20) of receiving a signed Final Order in this matter, Respondent shall remit a cashier's or certified check for the amount specified in Paragraph 16 above. Respondent shall make its check payable to "Treasurer, United States of America," and mail it to:

U. S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P. O. Box 979077
St. Louis, MO 63 197-9000

The check shall reference Respondent's name and facility address, the EPA Docket Number of this action. A copy of the check shall be sent simultaneously to:

Tina Artemis, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street [8RC]
Denver, Colorado 80202-1129

and

Cheryl Turcotte
EPCRA Enforcement Coordinator
US EPA, Region 8
1595 Wynkoop Street [8ENF-AT]
Denver, Colorado 80202-1129

20. In the event Respondent fails to pay or does not pay the full amount of its civil penalty by the due date, Respondent shall pay interest and late charges as specified below. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if the penalty is not paid when due. Interest will be assessed at the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due. Any such penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 C.F.R. §§ 102.13(d) and (e). Respondent specifically agrees that should it be delinquent with any payment, interest due on the delinquent amount shall be calculated from the date of the first payment date. Such interest calculation is non-discretionary and required by federal government debt collection procedures.

21. Respondent waives its right to a hearing on any issue of law or fact set forth in this Agreement and knowingly agrees to waive its right to a hearing on this matter under Section 325(b)(B) of EPCRA, 42 U.S.C. § 11045(b)(B), and to appeal this matter under EPCRA § 325(f), 42 U.S.C. § 11045(f).

22. This Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.

23. This Agreement, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.


24. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of this Agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

25. Nothing in this Agreement shall be construed as a waiver by the U.S. EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.

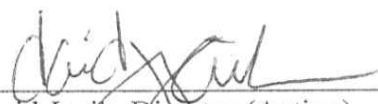
26. Each undersigned representative of the parties to this Agreement certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this Agreement and to execute and legally bind that party to this Agreement.
27. The parties agree to submit this Agreement to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.
28. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the alleged violations set forth in this Agreement.
29. This Agreement resolves Respondent's liability for Federal civil penalties under section 325 of EPCRA, 42 U.S.C. § 11045, for the alleged violations and facts contained in this Agreement. This Agreement shall not in any case affect EPA's right to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
30. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this Agreement.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**

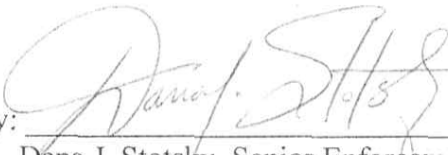
Date: 10/18/07

By: 
Martin Hestmark, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 10/18/07

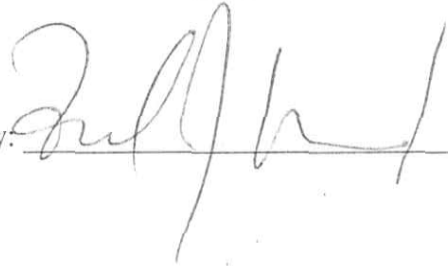
By: 
David Janik, Director (Acting)
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 10/17/2007

By: 
Dana J. Stotsky, Senior Enforcement Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

BRANNAN SAND AND GRAVEL COMPANY

Date: 10/4/07

By: 

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT/FINAL ORDER** in the matter **BRANNAN SAND AND GRAVEL COMPANY; DOCKET NO.: EPCRA-08-2008-0001** was filed with the Regional Hearing Clerk on October 24, 2007.

Further, the undersigned certifies that a true and correct copies of the documents were delivered to Dana Stotsky, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on October 24, 2007, to:

Brannan Sand and Gravel Company
4045 Fox Street
Denver, CO 80216

E-mailed to:

Michelle Angel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

October 24, 2007



Tina Artemis
Paralegal/Regional Hearing Clerk

