

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2006 OCT 27 PM 1:35

999 18TH STREET- SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2007-0002

IN THE MATTER OF:

UPPER PLAINS CONTRACTING, INC.

RESPONDENT

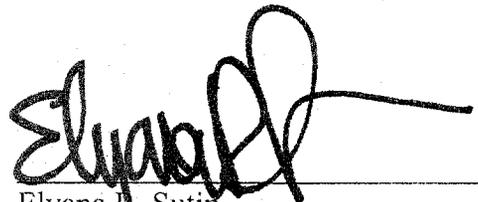
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FINAL ORDER

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.

10.27.06

DATE



Elyana R. Sutin
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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HEARING CLERK

In the Matter of:)
)
Upper Plains Contracting, Inc.)
)
) **EXPEDITED CONSENT AGREEMENT**
)
Respondent.) **DOCKET NO.: CWA-08-2007-0002**

Complainant, United States Environmental Protection Agency, Region 8, and Respondent, Upper Plains Contracting, Inc., by their undersigned representatives, hereby settle the civil cause of action arising out of a spill of oil that occurred on or about June 21, 2006, and agree as follows:

The Clean Water Act (the Act), as amended, authorizes the Administrator of EPA to assess administrative penalties against any person who discharges oil into or upon the navigable waters and adjoining shorelines of the United States in quantities that have been determined may be harmful to the public health or welfare or environment of the United States, 33 U.S.C. § 1321(b)(6) and (b)(3) or any person who violates the oil pollution prevention (SPCC) regulations, promulgated at 40 CFR Part 112 under Section 311(j) of the Clean Water Act, 33 U.S.C. § 1321(j). This determination includes discharges of oil that (1) violate applicable water quality standards, (2) cause a film, sheen, or discoloration of the surface of the water or the adjoining shoreline, or (3) cause a sludge or emulsion to be deposited beneath the surface of the water or the adjoining shoreline, 40 C.F.R. § 110.3 and the failure to prepare and implement an SPCC plan, in accordance with 40 C.F.R. § 112.7. This authority has been properly delegated to the undersigned EPA official.

Respondent owns and/or operates the 1,000 gallon diesel fuel tank located at Skunk Creek Bridge on I-29, Exit 78, Sioux Falls, South Dakota.

Respondent admits that on or about June 21, 2006, its Upper Plains Contracting, Inc. facility discharged approximately 10 gallons or less of diesel fuel into or upon Skunk Creek and the Big Sioux River and/or its adjoining shorelines.

Respondent's discharge from its facility caused a sheen upon, or discoloration of, or caused a sludge or emulsion to be deposited on the surface of the Skunk Creek and the Big Sioux River and/or its adjoining shoreline.

Respondent's discharge constitutes a violation of Section 311 (b)(3) of the Act.

Respondent admits that EPA has jurisdiction in this proceeding.

Respondent waives their right to a hearing before any civil tribunal, to contest any issue of law or fact set forth in this agreement.

This agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, 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.

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

Respondent consents and agrees to the assessment of a civil penalty of \$ 500.00, for the discharge of oil in violation of Section 311(b)(3) of the Act, which, shall be paid no later than 30 days after the effective date of the Final Order by means of a cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, the Respondent shall submit a cashier's or certified check, payable to "Environmental

Protection Agency,” and bearing the notations “OSLTF – 311” and the title and docket number of this case. If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency
P.O. Box 371099M
Pittsburgh, PA 15251

If the Respondent sends payment by a private delivery service, the payment shall be addressed to:

Mellon Client Service Center
ATTN: Shift Supervisor
Lockbox 371099M Account 9109125
500 Ross Street
Pittsburgh, PA 15262-0001

If paying by EFT, the Respondent shall transfer \$ 500.00 to:

Mellon Bank
ABA 043000261
Account 9109125
22 Morrow Drive
Pittsburgh, PA 15235

In the case of an international transfer of funds, the Respondent shall use SWIFT address MELNUS3P.

The Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the following persons:

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

and

Donna K Inman
Technical Enforcement Program (8ENF-UFO)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

Respondent states, under penalty of perjury, that they have (1) investigated the cause of the spill, (2) cleaned up the spill pursuant to federal requirements, and (3) taken corrective actions to prevent future spills. Respondent's cost of corrective actions and measures to achieve compliance to date has been \$ 3391.³⁹.

Respondent further agrees and consents that if Respondent fails to pay the penalty amount as required by this agreement once incorporated into the final order, or fails to make the corrective measures to obtain compliance or has not cleaned up the discharged oil as represented, this agreement is null and void, and EPA may pursue any applicable enforcement options.

The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this agreement and to bind Respondent to the terms and conditions of this agreement.

The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final consent order.

Each party shall bear its own costs and attorneys fees in connection with this matter.

This Consent Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations described in this agreement.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8,
Office of Enforcement Compliance and Environmental Justice, Complainant.**

By: Elisabeth Evans
Elisabeth Evans, Director
Technical Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice

Date: 10/26/2006

Upper Plains Contracting, Inc., Respondent.

By: UPCI - Nancy Fauth
Name: Nancy Fauth
Title: Human Resources

Date: 10-23-06

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED CONSENT AGREEMENT/FINAL ORDER** in the matter **UPPER PLAINS CONTRACTING, INC., DOCKET NO.: CWA-08-2007-0002** was filed with the Regional Hearing Clerk on October 27, 2006.

Further, the undersigned certifies that a true and correct copy of the document was delivered to David Janik, Enforcement Attorney, U. S. EPA – Region 8, 999 18th Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on October 27, 2006, to:

Nathan Reede
Upper Plains Contracting, Inc.
P. O. Box 966
Aberdeen, SD 57402-0966

Regular Mail to:

U. S. Coast Guard
Commander
Finance Center (OGR)
1430 A Kristina Way
Chesapeake, VA 23326

And faxed to:

Michelle Angel
U. S. Environmental Protection Agency
Cincinnati Finance Center Accounting
Fax: 513-487-2063

October 27, 2006



Tina Artemis
Regional Hearing Clerk

