



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8  
1595 WYNKOOP STREET  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

2010 SEP 13 AM 8:05

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: CWA-08-2010-0028

IN THE MATTER OF: )  
 )  
AMERICAN FURNITURE WAREHOUSE ) FINAL ORDER  
 )  
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 13<sup>th</sup> DAY OF September, 2010.

Elyana R. Sutin  
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2010 SEP 13 AM 8:05

In the Matter of: )  
)  
American Furniture Warehouse, )  
)  
Respondent. )

**EXPEDITED CONSENT AGREEMENT**

**DOCKET NO. : CWA-08-2010-0028**

FILED  
EPA REGION VIII  
RECORDING CLERK

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, American Furniture Warehouse, by their undersigned representatives, hereby settle the civil cause of action arising out of a spill of oil that occurred on or about September 23, 2009, 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). 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. This authority has been properly delegated to the undersigned EPA official.

Respondent owned and/or operated a retail furniture showroom and warehouse located at 8501 Grant Street, Thornton, Colorado, with a fleet of delivery trucks and over-the-road tractors based at the facility.

Respondent admits that on or about September 23, 2009, the nozzle of a fuel pump at the facility backed out of a truck tank and released 35 to 40 gallons of diesel fuel on the pavement, a

small amount of which entered Niver Creek. Niver Creek is tributary to the South Platte River, and/or its adjoining shorelines.

Respondent's discharge from its facility caused a sheen upon, or discoloration of the surface, or caused a sludge or emulsion to be deposited beneath the surface, of Niver Creek 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 its 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 thirty (30) days after the effective date of the Final Order by means of a cashier's or certified check, or by wire transfer. 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  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

If the Respondent sends payment by overnight mail, the payment should be sent to:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Natalie Pearson  
314-418-4087

Wire transfers should be directed 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"

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

**Tina Artemis, Regional Hearing Clerk (8RC)**  
**U.S. EPA Region 8**  
**1595 Wynkoop**  
**Denver, CO 80202-1129**

and

**Donna K. Inman**  
**Technical Enforcement Program (8ENF-UFO)**  
**U.S. EPA Region 8**  
**1595 Wynkoop**  
**Denver, CO 80202-1129**

Respondent states, under penalty of perjury, that it has (1) investigated the cause of the spill; (2) cleaned up the spill pursuant to federal requirements; and (3) taken corrective measures to prevent future spills.

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 order.

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

This Consent Agreement, upon incorporation into a final 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:   
Philip S. Strobel, Acting Director  
Technical Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice

Date: 9/9/10

**American Furniture Warehouse, Respondent.**

By: 

Date: 09-02-10

Name: MIKE BUSCETTA

Title: FACILITY MANAGER

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED CONSENT AGREEMENT/FINAL ORDER** in the matter of **AMERICAN FURNITURE WAREHOUSE; DOCKET NO.: CWA-08-2010-0028** was filed with the Regional Hearing Clerk on September 13, 2010.

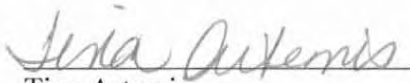
Further, the undersigned certifies that a true and correct copy of the documents were delivered David J. Janik, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on September 13, 2010.

Mike Buscietta, Facility Manager  
American Furniture Warehouse  
8501 Grant Street  
Thornton, CO 80229

E-mailed to:

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

September 13, 2010

  
Tina Artemis  
Paralegal/Regional Hearing Clerk

