



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

19 03 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Joseph A. Yoerg
Vice President and CFO
Whayne Supply Company
195 Lisle Industrial Avenue
Lexington, Kentucky 40502

SUBJ: Consent Agreement and Final Order
Docket No. CWA-04-2011-7001
SPCC Case Number: KY 0803-002

Dear Mr. Yoerg:

Enclosed is a copy of the Consent Agreement and Final Order (CAFO) for the above referenced matter. This CAFO became effective on the date of filing with the Regional Hearing Clerk as required by 40 C.F.R. §§ 22.6 and 22.31, and as indicated on the Certificate of Service.

The United States Environmental Protection Agency hereby notifies you that the Expedited Settlement Agreement (ESA) has been executed by both parties and is binding on the EPA and you. Upon receipt of your assessed penalty of \$550.00, the EPA will take no further action against you for the violations cited in the ESA. Your copy of the executed ESA is enclosed.

You must submit your payment within seven (7) days of your receipt of this letter by either electronic funds transfer, certified or cashiers check made payable to "Environmental Protection Agency." The check and a letter accompanying the check shall reference the name of the responsible party (Oil Spill Liability Trust Fund-311, Whayne Supply Company) and the EPA docket number CWA-04-2011-7001, and shall be sent depending upon your preferred method of payment identified in the enclosed collection information sheet.

At the same time, you shall send a separate copy of each check and a written statement that the payment is being made in accordance with this CAFO, to the persons at the following addresses:

Ms. Belinda Johnson
Acting Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Mr. Mel Rechtman
South Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

If you have any questions, please contact Mel Rechtman at (404) 562-8745.

Sincerely,

A handwritten signature in black ink, appearing to read 'Frank S. Ney', written in a cursive style.

Frank S. Ney, Acting Branch Chief
RCRA and OPA Enforcement and Compliance
Branch
RCRA Division

Enclosures

cc: USCG



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

61 FORSYTH ST S.W. ATLANTA, GEORGIA 30303

AUG 30 2011

**EXPEDITED SPILL PREVENTION, CONTROL AND
COUNTERMEASURES SETTLEMENT AGREEMENT**

DOCKET NO. CWA-04-2011-7001

On: May 25, 2008

At: Wayne Supply Company, 195 Lisle Industrial Avenue, Fayette County, Lexington Kentucky, owned or operated by Wayne Supply Company (Respondent), an authorized representative of the United States Environmental Protection Agency conducted an inspection to determine compliance with the Spill Prevention, Control and Countermeasures regulations promulgated at 40 CFR Part 112 under Section 311(j) of the Clean Water Act, 33 U.S.C. § 1321(j), (the Act), and found that Respondent had failed to comply with the SPCC regulations as noted on the attached SPCC Alleged Violations, which is hereby incorporated by reference.

The EPA finds the Respondent is subject to the SPCC regulations and has violated the SPCC regulations as further described in the SPCC Alleged Violations. The Respondent admits being subject to 40 CFR § 112 and that the EPA has jurisdiction over the Respondent and the Respondent's conduct as described in the SPCC Alleged Violations. Respondent neither admits nor denies the Alleged Violations.

The EPA is authorized to enter into this Expedited Settlement Agreement under the authority vested in the Administrator of the 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 Agreement in order to settle the civil violations described in the Alleged Violations for a penalty of \$550.00. The Respondent consents to the assessment of this penalty.

This Expedited Settlement Agreement is also 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 its violations, has corrected its violations pursuant to federal requirements at a cost of ~~\$25,000.00~~. The Respondent also by signature on this Expedited Settlement Agreement agrees to payment of the penalty assessed. **Do not enclose payment.** Upon receiving written execution of this Agreement, Respondent shall submit payment within 45 days by certified check or electronic funds transfer for \$550.00 payable to the "US Environmental Protection Agency CWA-311". Instructions on how to make this payment will be included in the written notice that will be issued when the Expedited Settlement Agreement becomes effective.

Upon signing and returning this Expedited Settlement Agreement to the EPA, Respondent waives the opportunity for a hearing or appeal pursuant to Section 311 of the Act, and consents to the EPA's approval of the Expedited Settlement Agreement without further notice.

After this Expedited Settlement Agreement becomes effective and the assessed penalty is paid, the EPA will take no further action against the Respondent for the violation of Section 311(j)(3) of the Act described in the Form. However, the EPA does not waive any rights to take any enforcement action for any other past, present, or

future violation by the Respondent of Section 311(j)(3) of the Act or of any other federal statute or regulation. By its first signature, the EPA ratifies the Findings and Alleged Violation set forth in the Form.

This Expedited Settlement Agreement is binding on the parties signing below, and effective upon the EPA's filing of the document with the Regional Hearing Clerk. If the Respondent does not sign and return this Expedited Settlement Agreement as presented within 7 days of the date of its receipt, the proposed Expedited Spill Settlement Agreement is withdrawn without prejudice to the EPA's ability to file any other enforcement action for the violation identified in the Form.

APPROVED BY RESPONDENT:

Name (print) Joseph H Yoerg
Title (print) VP & CEO
Signature [Signature] Date 8/29/11

APPROVED BY EPA:

[Signature] Date 9/7/11
Frank S. Ney, Acting Branch Chief
RCRA and OPA Enforcement & Compliance Branch
RCRA Division

IT IS SO ORDERED:

[Signature] Date 9/8/11
Susan B. Schub,
Regional Judicial Officer

Rev 5-31-11

HEARING CLERK

2011 SEP - 8 - PM 3:44

RECEIVED
EPA REGION IV

Spill Prevention Control and Countermeasure Inspection Findings, Alleged Violations and Proposed Penalty

Company Name: Whayne Supply Company	Docket Number: CWA-04-2011-7001
Facility Name: Whayne Supply Company	Date: May 25, 2008
Address: 195 Lisle Industrial Avenue Lexington, Kentucky 40502	Inspector's Name: Ted Walden
Facility Contact: David Hovekamp	EPA Approving Official: Frank S. Ney EPA Enforcement Contact: Jacq Marie Jack

On May 25, 2008, a representative of the US Environmental Protection Agency (EPA) inspected Whayne Supply Company's oil storage facility located at 195 Lisle Avenue, Lexington, Kentucky. The purpose of this inspection was to determine the facility's compliance status with the requirements of the Oil Pollution preventions Regulations at Title 40 of the Code of Federal Regulations (40 CFR) Part 112, promulgated pursuant to Section 311(j) of the Clean Water Act, 33 USC § 13421(j).

Summary of Findings

The inspection revealed the following deficiencies:

1. Plan has inadequate or no description and procedures to use when a discharge may occur
40 CFR § 112(a) (5)..... \$150.00
2. Plan does not discuss and facility did not implement appropriate
containment/diversionary structures/equipment (including truck transfer areas)
40 CFR § 112.7(c)..... \$400.00

COLLECTION INFORMATION

CHECK PAYMENTS:

U.S. Environmental Protection Agency
Fines and Penalties
P.O. Box 979077
St. Louis, Missouri 63197-9000

WIRE TRANSFERS:

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

OVERNIGHT MAIL:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

Contact: Natalie Pearson 314-418-4087

ACH (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving U.S. currency
US Treasury REX / ACH Receiver
5700 Rivertech Court
Riverdale, Maryland 20737
Contacts: John Schmid 202-874-7028 or
Remittance Express 1-866-234-5681
ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 310006
CTX Format

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury.
This payment option can be accessed from the information below:

www.pay.gov

Enter sfo 1.1 in the search field

Open form and complete required fields.

Docket No. CWA-04-2011-7001

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached Consent Agreement and Final Order, in the Matter of Whayne Supply Company, Docket No. CWA-04-2011-7001 (filed with the Regional Hearing Clerk on 9/8, 2011) was served on 9/8, 2011 in the manner specified to each of the persons set forth below:

Mr. Joseph A. Yoerg
Vice President and CFO
Whayne Supply Company
195 Lisle Industrial Avenue
Lexington, Kentucky 40502

CERTIFIED MAIL
Returned Receipt Requested

Mel Rechtman
RCRA and OPA Enforcement and Compliance Branch
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

via EPA's Internal Mail

Quantindra Smith
RCRA and OPA Enforcement and Compliance Branch
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

via EPA's Internal Mail and PDF

Date: 9/8/11


Belinda Johnson, Acting Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

PAYMENT DUE DATE: _____

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Mel Rechtman on 9/7/11
(Name) (Date)

in the ROECB at 404/562-8745
(Office) (Phone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Whayne Supply Company

The Total Dollar Amount of the Receivable: \$550.00

(If installments, attach schedule of amounts and respective due dates. See other side of this form.)

The Case Docket Number: CWA-04-2011-7001

The Site Specific Superfund Account Number:

The Designated Regional/Headquarters Program Office: RCRA Division

To Be Completed By Cincinnati Finance Center

The IFMS Accounts Receivable Control Number is: _____ Date: /2010

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044

2. Originating Office (EAD)
3. Designated Program Office

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order Should be to:

1. Originating Office
2. Regional Hearing Clerk

3. Designated Program Office
4. Regional Counsel (EAD)