

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY 2014 SEP 24 PM 2:59  
REGION 8

<b>IN THE MATTER OF:</b>	)	<b>COMBINED COMPLAINT AND CONSENT AGREEMENT</b>
	)	
<b>J. C. Hunt Company, Inc.</b>	)	
<b>1261 S. Main Street</b>	)	Docket No. <b>CWA-08-2014-0033</b>
<b>Blanding, Utah 84511</b>	)	
	)	Simultaneous Commencement and
	)	Conclusion of a Proceeding Pursuant to
<b>Respondent</b>	)	Section 311(b)(6) of the Clean Water Act
<hr/>	)	and 40 C.F.R. § 22.13(b)

Complainant, United States Environmental Protection Agency, Region 8, and Respondent, J.C. Hunt Company, Inc., by their undersigned representatives, hereby consent and agree as follows:

**I. STATUTORY AUTHORITY**

1. This Combined Complaint and Consent Agreement (Agreement) is issued pursuant to section 311(b)(6) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6), and 40 C.F.R. § 22.13(b). Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), authorizes the Administrator of the EPA to issue a complaint that assesses civil penalties for violations of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), which authority has been properly delegated to the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, Region 8. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22, governs such proceedings. According to 40 C.F.R. § 22.13(b), a proceeding subject to the Consolidated Rules may be simultaneously commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

## **II. PARTIES BOUND**

2. This Agreement shall apply to and be binding upon the EPA and shall be binding upon the Respondent, its officers, directors, agents, successors, and assigns. Any change in the ownership or legal status of Respondent or the business organization, structure or status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter its responsibilities under this Agreement.

## **III. STATEMENT OF PARTIES**

3. Respondent stipulates to the EPA's jurisdiction and venue over the matters contained in this Agreement; however, Respondent neither admits nor denies the specific factual allegations contained herein.

4. Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in this Agreement, and waives its right to appeal a final order (Final Order) approving this settlement.

5. The signatories to this Agreement certify that they are authorized to execute and legally bind the parties they represent to this Agreement.

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

7. The EPA and Respondent agree that settlement of this matter is in the public interest, and that execution of this Agreement and issuance of the Final Order without further litigation and without adjudication of any issue of fact or law is the most appropriate means of resolving this matter. In accordance with section 311(b)(6)(C) of the Act, 33 U.S.C. 1321(6)(C), the EPA shall provide public notice of and reasonable opportunity to comment on the proposed issuance of a final order in this matter.

#### IV. STATUTORY AND REGULATORY FRAMEWORK

8. The objective of the Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. 33 U.S.C. § 1251(a).

9. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), in pertinent part, prohibits the discharge of any oil or hazardous substances into or upon the navigable waters of the United States or their adjoining shorelines in such quantities as may be harmful as determined by the President.

10. The term "discharge" is defined in section 311(a)(2) of the Act, 33 U.S.C. § 1321(a)(2), to include, in pertinent part, "any spilling, leaking, pumping, pouring, emitting, emptying or dumping . . . ."

11. The term "oil" is defined in section 311(a)(1) of the Act, in pertinent part, as "oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge . . . ." 33 U.S.C. § 1321(a)(1).

12. The term "navigable waters" is defined in section 502(7) of the Act as "waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7).

13. The term "navigable waters," as further defined in 40 C.F.R. § 110.1, "means the waters of the United States, including the territorial seas," and includes, *inter alia*: "(a) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide; (b) Interstate waters, including interstate wetlands; . . . ; (e) Tributaries of waters identified in paragraphs (a) through (d) of this section, including adjacent wetlands; and (f) Wetlands adjacent to waters identified in paragraphs (a) through (e) of this section . . . ."

14. In accordance with section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), the President, through a delegation to the EPA, has determined, by regulation, those quantities of oil

the discharge of which may be harmful to the public health or welfare or the environment of the United States. Exec. Order No. 11735, 38 Fed. Reg. 21243 (Aug. 3, 1973), and Executive Order 12777, 56 Fed. Reg. 54757 (October 22, 1991). Discharges of oil in such quantities as may be harmful, include discharges of oil that: “(a) Violate applicable water quality standards; or (b) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.” 40 C.F.R. § 110.3.

15. Pursuant to section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A), any owner, operator, or person in charge of any vessel, onshore facility or offshore facility from which oil is discharged in violation of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), may be assessed a class I or class II civil penalty.

16. The term “owner or operator” is defined in section 311(a)(6) of the Act in pertinent part as “in the case of an onshore facility, . . . any person owning or operating such onshore facility . . . .” 33 U.S.C. § 1321(a)(6).

17. According to section 311(a)(7) of the Act, “person” includes an individual, firm, corporation, association, and a partnership. 33 U.S.C. § 1321(a)(7).

18. The term “onshore facility” is defined in section 311(a)(10) of the Act as “any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land.” 33 U.S.C. § 1321(a)(10).

## V. GENERAL ALLEGATIONS

19. Respondent is and was at all relevant times a corporation organized under the laws of Utah and licensed to do business in Colorado. Respondent’s office is located at 1261 S. Main Street, Blanding, Utah 84511.

20. The registered agent of J. C. Hunt Company, Inc., is Carl E. Hunt. The address of Respondent's registered agent, on file with the Utah Secretary of State, is the address referenced in Paragraph 19, *supra*.

21. Respondent is and was at all times relevant to this Agreement a "person" within the meaning of section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7).

22. At all relevant times, Respondent owned and operated the truck tractor and the tanker trailer involved in the release referenced in Paragraph 26, *infra*.

23. The tanker trailer and truck tractor referenced in Paragraph 22, *supra*, were at all relevant times "onshore facilities" within the meaning of section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

24. The South Fork of the Rio Grande and their adjacent wetlands are and were at all relevant times "navigable waters" within the meaning of 40 C.F.R. § 110.1 and section 502(7) of the Act, 33 U.S.C. § 1362(7).

## **VI. SPECIFIC ALLEGATIONS**

25. On November 14, 2009, the truck tractor pulling the tanker trailer referenced in Paragraph 22, *supra*, crashed and came to rest on its side near milepost 179, US Highway 160, Rio Grande County, Colorado. The tanker trailer was filled with approximately 3,800 gallons of gasoline.

26. The tanker trailer referenced in Paragraph 25 ruptured, releasing approximately 3,800 gallons of gasoline which flowed into the bedrock below the highway into the wetlands immediately adjacent to the South Fork of the Rio Grande, a habitat for the Rio Grande Cutthroat Trout, in land designated as the Rio Grande National Forest.

27. The Respondent's release of 3,800 gallons of gasoline referenced in Paragraph 26 impacted the South Fork of the Rio Grande and adjacent wetlands violating applicable water quality standards for benzene, toluene, ethylbenzene, and xylenes (BTEX).

28. In accordance with the EPA Administrative Order issued pursuant to section 311(c) of the Act, 33 U.S.C. § 1321(c), Docket No.: CWA-08-2010-0013, the Respondent installed trenches and a pump and treat system which has been replaced by a bioremediation system that has been installed to reduce any contamination occurring throughout the wetlands.

## **VII. VIOLATION**

29. Paragraphs 1 through 28 of this Agreement are re-alleged and incorporated herein by reference.

30. The release of gasoline referenced in Paragraph 26 was at all relevant times a "discharge" within the meaning of section 311(a)(2) of the Act, 33 U.S.C. § 1321(a)(2).

31. The discharged gasoline referenced in Paragraph 26 was at all relevant times "oil" within the meaning of section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

32. The oil that was discharged into the South Fork of the Rio Grande and the adjacent wetlands referenced in Paragraph 27 was discharged in "quantities as may be harmful" within the meaning of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3.

33. Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. part 19 authorize the assessment of a Class II civil penalty not to exceed \$16,000 per day for each day during which the violation continues, up to a maximum civil penalty of \$177,500, for violations of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), occurring after January 12, 2009.

### VIII. PAYMENT OF CIVIL PENALTY

34. Respondent, by signing this Agreement, herein certifies to the EPA that Respondent is now in compliance with each of the relevant provisions of the Act that formed the basis of the Complaint.

35. Based on the foregoing allegations and pursuant to the authority of section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. §1321(b)(6)(B)(ii), and 40 CFR section 19.4, the EPA proposes the assessment of administrative penalties against Respondent in the amount of thirty three thousand dollars (\$33,000).

36. Respondent consents to the issuance of the Final Order and consents for the purpose of settlement to pay a civil penalty in the amount of thirty three thousand dollars (\$33,000) in **nine payments**, in the manner described below in this Paragraph.

a. The **first payment** of ONE THOUSAND DOLLARS (\$1,000.00) is due within thirty (30) calendar days from the date written on the Final Order issued by the Regional Judicial Officer that incorporates this Agreement.

b. The **second payment** of FOUR THOUSAND DOLLARS (\$4,000) is due on the twentieth day of **December 2014**.

c. The **third payment** of FOUR THOUSAND DOLLARS (\$4,000) is due on the twentieth day of **March 2015**.

d. The **fourth payment** of FOUR THOUSAND DOLLARS (\$4,000) is due on the twentieth day of **June 2015**.

e. The **fifth payment** of FOUR THOUSAND DOLLARS (\$4,000) is due on the twentieth day of **September 2015**.

f. The **sixth payment** of FOUR THOUSAND DOLLARS (\$4,000) is due on the twentieth day of **December 2015**.

g. The **seventh payment** of FOUR THOUSAND DOLLARS (\$4,000) is due on the twentieth day of **March 2016**.

h. The **eighth payment** of FOUR THOUSAND DOLLARS (\$4,000) is due on the twentieth day of **June 2016**.

i. The **ninth and final payment** of FOUR THOUSAND DOLLARS (\$4,000) is due on the twentieth day of **September 2016**.

j. If the due date of any of the nine payments falls on a weekend or legal federal holiday, the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

k. Payments shall be made by any of the methods set forth in Appendix 1 to this Agreement.

l. At the same time that each payment is made, notice that the payment has been made shall be provided to:

Dennis Jaramillo (8ENF-UFO)  
Environmental Engineer  
U.S. EPA Region 8  
1595 Wynkoop  
Denver, CO 80202-1129

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

If a payment is made by cashiers or certified check, the notice shall include a copy of the check. If a payment is made in any other manner, the notice shall include documentation demonstrating that the payment was made.

m. In the event a payment is not received by the specified due date, interest on the late payment shall accrue from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (e.g., on the 1<sup>st</sup> late day for the first payment, 30 days of interest accrues).



n. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the date of the Final Order, and each subsequent 30-day period that the initial payment, or any portion thereof, remains unpaid, and a handling charge of fifteen dollars (\$15) shall be assessed on the 1st day after the due date of each subsequent payment, and each subsequent 30-day period that any such payment, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (e.g., the 121st day from the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount. Further, Respondent shall be subject to the fees, costs, and nonpayment penalty set forth in section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H).

o. If any of the nine civil penalty payments required by this Paragraph 36 (Subparagraphs a through i) are not paid within the time specified, the EPA, in its sole, unreviewable discretion, may elect to accelerate any remaining payments, such that the remaining payment(s) will be due within thirty (30) calendar days of Respondent's receipt of notice of such acceleration from the EPA. The provisions of Subparagraphs j through p of this Paragraph 36 shall apply to such accelerated payment.

p. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

37. The civil penalty set forth in Paragraph 35 of this Agreement was determined by the EPA after taking into account all factors identified in section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), i.e., the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other

penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

#### **IX. OTHER TERMS AND CONDITIONS**

38. 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 United States Department of Justice for enforcement of this Agreement and for such other relief as may be appropriate.

39. Nothing in this Agreement shall be construed as a waiver by the EPA or any other federal entity 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.

40. 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 civil penalty owed for violations alleged in this Agreement.

41. This Agreement resolves Respondent's liability for federal civil penalties under section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), for the alleged violations contained in this Agreement. This Agreement shall not in any case affect the EPA's right to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law whether or not alleged in this Agreement. This Agreement shall not affect Respondent's right to assert any defense in any action by the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

42. Each party shall bear its own costs and attorney fees in connection with all issues associated with this Agreement.


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

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Suzanne J. Bohan  
Acting Assistant Regional Administrator  
Office of Enforcement, Compliance &  
Environmental Justice  
U.S. EPA Region 8

**J.C. HUNT COMPANY, INC.,**  
Respondent

9-15-14  
Date \_\_\_\_\_

By:   
Carl E. Hunt, President

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2014 SEP 24 PM 2:58

FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF: )  
)  
J. C. Hunt Company, Inc. )  
1261 S. Main Street )  
Blanding, Utah 84511 )  
)  
)  
Respondent )  
\_\_\_\_\_ )

Motion to File Pdf Signature Page

Docket No. CWA-08-2014-0033

Comes Now Complainant, the United States Environmental Protection Agency (EPA), Region 8, and Respondent, J. C. Hunt Company, Inc. requesting that the Regional Judicial Officer (RJO) accept the filing of Respondent's pdf signature page. Respondent agrees to send the original signature page to Complainant, and Complainant will replace the pdf'd signature page with the RJO's office upon receipt from Respondent. The Parties request that the RJO grant this Motion to File a pdf Signature.

Respectfully submitted this 24<sup>th</sup> day of September, 2014.



Brenda L. Morris, Attorney  
U.S.EPA Region 8  
1595 Wynkoop St.  
Denver, CO 80202-1129

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

Date: Sept. 24, 2014

By: Eddie A. Sierra  
for Suzanne J. Bohan  
Acting Assistant Regional Administrator  
Office of Enforcement, Compliance &  
Environmental Justice  
U.S. EPA Region 8

**J.C. HUNT COMPANY, INC.,**  
Respondent

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Carl E. Hunt, President

**Combined Complaint and Consent Agreement - Appendix 1**

The following are acceptable payment methods for the civil penalty required to be paid pursuant to the Agreement.

1. If payment is being made by check, submit the check, including the name, docket number, and the notation, "Oil Spill Liability Trust Fund-311," payable to "**Environmental Protection Agency**" :

Regular Mail:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

Federal Express, Airborne, or other commercial carrier:

US Bank  
Cincinnati Finance Center Box 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Craig Steffen  
513-487-2091

2. Wire Transfers:

Wire transfers must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City with the following information:

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"

3. ACH (also known as REX or remittance express):

Please indicate the name and docket number of this case on Automated Clearinghouse (ACH) payments to EPA made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver

ABA: 051036706

Account Number: 310006, Environmental Protection Agency

CTX Format Transaction Code 22 – checking

Physical location of US Treasury Facility

5700 Rivertech Court

Riverdale, MD 20737

US Treasury Contact Information:

Randolph Maxwell: 202-874-7026

Remittance Express (REX): 1-866-234-5681

4. 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](http://www.pay.gov)

Enter "sfo 1.1" (without the quotation marks) in the "Search Public Forms" field.

Click on the first link to open the form, complete required fields, and then click on "Submit Data" button at bottom of form.

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one true and correct copy of the Motion to File a Pdf Signature Page was hand-carried to the Regional Hearing Clerk:

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

And that a true copy of the same was sent via CERTIFIED MAIL/RETURN RECEIPT REQUESTED to:

**Carl E. Hunt, President**  
**J. C. Hunt Company, Inc.**  
**1261 S. Main Street**  
**Blanding, Utah 84511**

  
Brenda Morris

Date September 24, 2014