



EXPEDITED OIL SPILL SETTLEMENT AGREEMENT
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7, 901 N. 5th ST., KANSAS CITY, KANSAS 66101

DOCKET NO. CWA-07-2011-0085

On March 23, 2011

At: 80132 Kembel Road, Scottsbluff, NE

Owned or operated by Kembel Sand and Gravel Company, (Respondent), discharged 34 gallons of oil (30 diesel fuel and 4 motor oil) in violation of regulations promulgated at 40 C.F.R. Part 110 under Section 311(b)(3) of the Clean Water Act as noted on the attached FINDINGS AND ALLEGED VIOLATIONS FORM, (Form), which is hereby incorporated by reference.

This proceeding and the Expedited Settlement are under the authority vested in the Administrator of 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 C.F.R. §§ 22.13(b). The parties enter into this Expedited Settlement in order to settle the civil violations described in the Form for a penalty of \$500.

This settlement is subject to the following terms and conditions:

Respondent consents to the assessment of the penalty stated above. Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the violations have been corrected and Respondent has sent a certified check in the amount of \$500, payable to the "Environmental Protection Agency," via certified mail to:

U.S. Environmental Protection Agency
P.O. Box 979077
St. Louis, MO 63197-9000

and Respondent has noted on the penalty payment check Docket No. CWA-07-2011-0085 and "OSLTF - 311." The original, signed Settlement Agreement and copy of the penalty payment check must be sent via certified mail to:

Mr. Douglas Drouare
U.S. Environmental Protection Agency
Region 7, AWMD/STOP
901 N. 5th Street
Kansas City, KS 66101

This Expedited Settlement resolves Respondent's liability for Federal civil penalties for the violations of the oil spill regulations described in the Form. However, EPA does not waive any rights to take any enforcement action for any other past, present, or future violations by Respondent of the OPA/SPCC regulations or of any other federal statute or regulations. By its first signature, EPA ratifies the Findings and Alleged Violations set forth in the Form.

Upon signing and returning this Expedited Settlement to EPA, Respondent waives the opportunity for a

hearing or appeal pursuant to Section 311 of the Act, and consents to EPA's approval of the Expedited Settlement without further notice.

This Expedited Settlement is binding on the parties signing below, and is effective upon the Regional Judicial Officer's signature.

APPROVED BY EPA:

[Signature] Date 9-22-2011
Chief, Storage Tank and Oil Pollution Branch (STOP)
Air and Waste Management Division

APPROVED BY RESPONDENT:

Name (print): Lon HASCALL

Title (print): President

Signature: Lon Hascall

Date: 9-12-11

The estimated cost for correcting the violation(s) is:

\$ 500.00

IT IS SO ORDERED

[Signature] Date Sept. 30, 2011
Robert L. Patrick
Regional Judicial Officer

11 SEP 30 2011 8:42
ENVIRONMENTAL PROTECTION
AGENCY REGION 7
REGIONAL HEARING CLERK

FINDINGS AND ALLEGED CIVIL VIOLATIONS

1. Kembel Sand and Gravel Company organized under the laws of Nebraska with a place of business located at 132 Kembel Road, Scottsbluff, Nebraska 69361. The Respondent is a person within the meaning of Section 311 (a)(7) of the Act, 33 U.S.C. §1321 (a)(7).
2. Respondent is the owner/operator of an onshore facility within the meaning of Section 311 (a)(10) of the Act, 33 U.S.C. §1321 (a)(10) of the Act, which is located on 80132 Kembel Road, Scottsbluff, Nebraska 69361 ('facility').
3. Section 311(b)(3) of the Act prohibits the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.
4. For purposes of Section 311 (b)(3) and (b)(4) of the Act, 33 U.S.C. §1321 (b)(3) and (b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. § 110.3 to include discharges of oil that cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines or a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.
5. On March 23, 2011, Respondent discharged 34 gallons of oil (30 diesel fuel and 4 motor oil) as defined in Section 311 (a)(1) of the Act, 33 U.S.C. §1321(a)(1), and 40 C.F.R. §110.1, from its facility into or upon the North Platte River and adjoining shorelines.
6. The North Platte River is a navigable water of the United States as defined in Section 502(7) of the Act, 33 U.S.C. §1362(7), and 40 C.F.R. §110.1.
7. Respondent's March 23, 2011 discharge (track hoe rolled over into stream) of oil (30 diesel fuel and 4 motor oil) from its facility caused a sheen upon or discoloration of the surface of the North Platte River and the adjoining shoreline and therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. §110.3, which implements Sections 311(b)(3) and (b)(4) of the Act.
8. Respondent's March 23, 2011 discharge (track hoe rolled over into stream) of oil (30 diesel fuel and 4 motor oil) from its facility into or upon the North Platte River and adjoining shorelines in a quantity that has been determined may be harmful under 40 C.F.R. §110.3 violated Section 311(b)(3) of the Act. Pursuant to Section 311(b)(6)(B)(i) of the Act, and 40 C.F.R. 19.4, the Respondent is liable for civil penalties of up to \$16,000 per violation, up to a maximum of \$37,500.

IN THE MATTER OF Kembel Sand and Gravel Company, Respondent
Docket No. CWA-07-2011-0085

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Expedited Oil Spill Settlement Agreement was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Howard Bunch
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Lon Hascall
President
Kembel Sand and Gravel Company
132 Kembel Road
Scottsbluff, Nebraska 69361

Dated: 9/30/11


for Kathy Robinson
Hearing Clerk, Region 7