



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2007 AUG 16 PM 3: 20

1595 WYNKOOP STREET

DENVER, CO 80202-2466

Phone 800-227-1129

http://www.epa.gov/region08

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2007-0013

IN THE MATTER OF:

SMITHWAY MOTOR XPRESS CORP.
d/b/a EAST WEST MOTOR EXPRESS 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 Respondents are hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

SO ORDERED THIS 16th DAY OF August, 2007

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2007 AUG 16 PM 3: 21

In the Matter of:

Smithway Motor Xpress Corp.

Respondent.

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EXPEDITED CONSENT AGREEMENT

DOCKET NO.: CWA-08-2007-0013

FILED
EPA REGION VIII
HEARING CLERK

Complainant, United States Environmental Protection Agency, Region VIII, and Respondent, Smithway Motor Xpress Corporation, dba East West Motor Express, Incorporated, by their undersigned representatives, hereby settle the civil cause of action arising out of violations of the Spill Prevention Control and Countermeasure (SPCC) Plan regulations found during an inspection on August 15, 2006, and agree as follows:

The Clean Water Act (the Act), as amended, 33 U.S.C. § 1321(b)(6), authorizes the Administrator of EPA to assess administrative penalties against 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 authority has been properly delegated to the undersigned EPA official.

Respondent owns and/or operates a transportation services facility, East West Motor Express, Inc., located at 11740 JB Road, Black Hawk, South Dakota.

Respondent admits its facility is subject to the SPCC regulations.

Respondent admits it failed to prepare and implement an SPCC Plan for its East West Motor Express, Inc. as required by Section 311(j) of the Clean Water Act, 33 U.S.C. § 1321(j) in accordance with 40 C.F.R. part 112.

Respondent agrees to prepare and submit to the person named below a corrected facility SPCC Plan in accordance with 40 C.F.R. part 112 within thirty (30) days unless an extension for achieving compliance is granted by EPA at its discretion.

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 \$1,450.00 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 \$1,450.00 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
1595 Wynkoop
Denver, CO 80202-1129

and

Jane Nakad
Technical Enforcement Program (8ENF-UFO)
U.S. EPA Region 8
1595 Wynkoop
Denver, CO 80202-1129

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 as represented, this agreement is null and void, and EPA may pursue any applicable enforcement options.

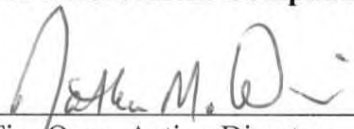
The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this agreement and to bind Respondent to the terms and conditions of this agreement.

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.

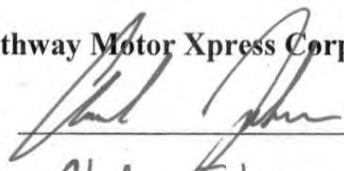
This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations described in this agreement.

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

By : 
for Tim Osag, Acting Director
Technical Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice

Date: 8-14-2007

Smithway Motor Xpress Corp., Respondent.

By : 
Name: Chad Johnson
Title: VP Vehicle Operations

Date: 8/2/07

LIST OF SPCC VIOLATIONS
East West Motor Express, Inc.

The facility does not have an adequate SPCC Plan in violation of 40 C.F.R. § 112.3.

The following technical violations were found during the inspection:

- Inadequate secondary containment for the loading unloading area for diesel and unleaded gasoline transfer area in violation of 40 C.F.R. § 112.7(c). Need volume calculations in Plan, and photos documenting installation of secondary containment.
- Inadequate inspections and tests conducted in violation of 40 C.F.R. § 112.7(e). Inspection checklist does not include tanks, foundations, supports, and rainwater in containment.
- No formal personnel training program, discharge prevention briefings not conducted in violation of 40 C.F.R. § 112.7(f). Training and briefing records not completed.
- Master flow and drain valves of tanks not secured in violation of 40 C.F.R. § 112.7(g)(2).
- No records of drainage from the diked area for diesel and unleaded gasoline bulk storage in violation of 40 C.F.R. § 112.8(c)(3)(iv).
- No formal visual inspection procedure for oil storage tanks, no integrity testing conducted, no records of inspections or tests in violation of 40 C.F.R. § 112.8(c)(6).

The SPCC Plan has the following violations:

- Inadequate PE certification in violation of 40 C.F.R. § 112.3(d). Lacks required elements.
- No signature nor date for management approval in violation of 40 C.F.R. § 112.7.
- Inadequate cross-reference matrix in violation of 40 C.F.R. § 112.7. Incomplete and page references inaccurate.
- Deviations from requirements not discussed in violation of 40 C.F.R. § 112.7(a)(2).
- Inadequate facility diagram in violation of 40 C.F.R. § 112.7(a)(3). No piping to transfer stations shown.

- No discussion of disposal of recovered materials in violation of 40 C.F.R. §112.7(a)(3)(v).
- No notification contact list in violation of 40 C.F.R. §112.7(a)(3)(vi).
- No discharge notification form in violation of 40 C.F.R. §112.7(a)(4).
- Inadequate discharge prediction in violation of 40 C.F.R. §112.7(b). There are no rates for all discharge types.
- No discussion of secondary containment for loading/unloading or undiked areas from which a discharge could occur in violation of 40 C.F.R. §112.7(c).
- Inadequate written procedures and records of inspections in violation of 40 C.F.R. §112.7(e). Tanks, foundations, supports, and rain water not on inspection forms.
- No documentation of personnel training in violation of 40 C.F.R. §112.7(f).
- No discussion of securing master flow and drain valves from bulk containers in violation of 40 C.F.R. §112.7(g)(2).
- No discussion regarding sealing the loading/unloading connections in violation of 40 C.F.R. §112.7(g)(4).
- No discussion of conformance with State regulations in violation of 40 C.F.R. §112.7(j).
- No discussion of undiked area drainage to pond, catch basin, etc. in violation of 40 C.F.R. §112.8.
- Inadequate discussion of secondary containment for bulk containers in violation of 40 C.F.R. §112.8(c)(2). No volume calculations.
- No discussion of drainage of rain water from secondary containment in violation of 40 C.F.R. §112.8(c)(3).
- No discussion of whether there is effluent treatment discharges in violation of 40 C.F.R. §112.8(c)(9).
- Inadequate discussion of secondary containment for portable containers in violation of 40 C.F.R. §112.8(c)(11). Drums are mentioned, but there is no discussion of how many drums are stored at this facility or where they are staged.

- No procedure for blank-flanging out-of-service pipes in violation of 40 C.F.R. §112.8(d)(2).
- No discussion of pipe support design in violation of 40 C.F.R. §112.8(d)(3).
- Substantial Harm certification not completed in violation of 40 C.F.R. §112.20(e).

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED CONSENT AGREEMENT/FINAL ORDER** in the matter **SMITHWAY MOTOR XPRESS CORP., DOCKET NO.: CWA-08-2007-0013** was filed with the Regional Hearing Clerk on August 16, 2007.

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, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on August 16, 2007, to:

Chad Johnson, Vice President
Vehicle Operations
Smithway Motor Xpress Corp.
2031 Quail Avenue
Ft. Dodge, IA 50501-8511

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

And e-mailed to:

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

August 16, 2007



Tina Artemis
Paralegal/Regional Hearing Clerk

