



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
81 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

NOV 10 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. James E. Johnson, Managing Member
Bluegrass BioDiesel
175 David Pribble Drive
Falmouth, Kentucky 41040

SUBJ: Consent Agreement and Final Order:
Docket No. CWA-04-2010-5025
Spill in Pendleton County, Kentucky, on or about December 23, 2009
NRC Report No. 927017

Dear Mr. Johnson:

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 (EPA) hereby notifies you that the Expedited Settlement Agreement has been executed by both parties and is binding on EPA and you. Upon receipt of your assessed penalty of \$500.00, EPA will take no further action against you for the violations cited in the Settlement Agreement. Your copy of the executed agreement 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, Bluegrass BioDiesel) and the EPA docket number CWA-04-2010-5025, and shall be sent depending upon your preferred method of payment identified in Enclosure A.

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. Patricia Bullock
Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Mel Rechtman
U.S. EPA - Region 4
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

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

Sincerely,



Dee Stewart, Acting Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

Enclosures:

1. Expedited Settlement Agreement
2. Payment Information

cc: USCG

ENCLOSURE A

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.

OCT 12 2009

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
61 FORSYTH STREET, ATLANTA, GEORGIA 30303
EXPEDITED SPILL SETTLEMENT AGREEMENT

DOCKET NO. CWA-04-2010-5025

On: December 23, 2009 Time: 12:00
At: or near 175 David Pribble Drive, Falmouth, Pendleton
County, Kentucky, Bluegrass BioDiesel (Respondent)
discharged 800 gallons of oil in violation of
Section 311(b)(3) of the Clean Water Act (the Act), as noted
on the attached ALLEGED CIVIL VIOLATION (Form),
which is hereby incorporated by reference.

EPA finds the Respondent's conduct is subject to the
discharge prohibition of Section 311(b)(3) of the Act, as
described in that statute and further described by
40 C.F.R. § 110.3. The Respondent admits being subject
to Section 311(b)(3) and that EPA has jurisdiction over the
Respondent and the Respondent's conduct as described in
the Form. Respondent neither admits nor denies the
Allegations in the Form.

EPA is authorized to enter into this Expedited Spill
Settlement Agreement 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 Spill Settlement Agreement
in order to settle the civil violation described in the Form for
a penalty of \$500.00. Respondent consents to the assessment
of this penalty.

This Expedited Spill 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 the cause of the spill, it has cleaned up the spill
pursuant to federal requirements at a cost of \$692,249,
and it has taken corrective actions that will prevent future
spills. The Respondent also by signature on this Expedited
Spill 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 7 days by certified check or electronic funds
transfer for \$500.00 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 Spill Settlement
Agreement becomes effective.

Upon signing and returning this Expedited Spill Settlement
Agreement 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 Spill
Settlement Agreement without further notice.

After this Expedited Spill Settlement Agreement becomes
effective and the assessed penalty is paid, EPA will take
no further action against the Respondent for the violation
of Section 311(b)(3) of the Act described in the Form.
However, 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(b)(3) of the Act
or of any other federal statute or regulation. By its first
signature, EPA ratifies the Findings and Alleged Violation
set forth in the Form.

This Expedited Spill Settlement Agreement is binding on
the parties signing below, and effective upon EPA's filing
of the document with the Regional Hearing Clerk. If the
Respondent does not sign and return this Expedited Spill
Settlement Agreement as presented within 30 days of the
date of its receipt, the proposed Expedited Spill Settlement
Agreement is withdrawn without prejudice to EPA's ability
to file any other enforcement action for the violation
identified in the Form.


APPROVED BY RESPONDENT:

Name (print): James E. Johnson


Title (print): Managing Member

Signature: 

APPROVED BY EPA:

 Date 11/3/09
Caroline Y. F. Robinson, Chief
RCRA/OPA Enforcement and Compliance Branch
RCRA Division

IT IS SO ORDERED:

 Date 11/10/09
Susan B. Schub
Regional Judicial Officer

RECEIVED
NOV 10 2009
RCRA/OPA ENFORCEMENT AND COMPLIANCE BRANCH
RCRA DIVISION

ALLEGED CIVIL VIOLATION - DOCKET NO. CWA-04-2010-5025

1. Bluegrass BioDiesel, Respondent, is a corporation with a place of business located at 175 David Pribble Drive, Falmouth, Kentucky 41040. The respondent is a person within the meaning of Section 311(a)(7) of the Clean Water Act, 33 U.S.C. § 1321(a)(7) (Act).
2. Respondent is the owner of an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), which is located at or near 175 Pebble Drive, Falmouth, Pendleton County, Kentucky ("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 (1) violate applicable water quality standards or, (2) cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines or, (3) cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.
5. On December 23, 2009, Respondent discharged an estimated 800 gallons of oil as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), from its facility into or upon the unnamed creek which flows into the Licking River and adjoining shorelines.
6. The unnamed creek which flows into the Licking River is a "navigable water of the United States" subject to the jurisdiction of Section 311 of the Act 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 December 23, 2009, discharge of oil from its facility caused a sheen upon or discoloration of the surface or the adjoining shoreline of the unnamed creek or caused a sludge or emulsion to be deposited beneath the surface, and therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3.
8. Respondent's December 23, 2009, discharge of oil from its facility into or upon the unnamed creek 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.

Docket No. CWA-04-2010-5025

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached Consent Agreement and Final Order, in the Matter of Bluegrass BioDiesel, Docket No. CWA-04-2010-5025 (filed with the Regional Hearing Clerk on NOV 10 2010, 2010) was served on NOV 10 2010, 2010 in the manner specified to each of the person set forth below:

Mr. James E. Johnson, Managing Member
Bluegrass BioDiesel
175 David Pribble Drive
Falmouth, Kentucky 927017

CERTIFIED MAIL
Return Receipt Requested

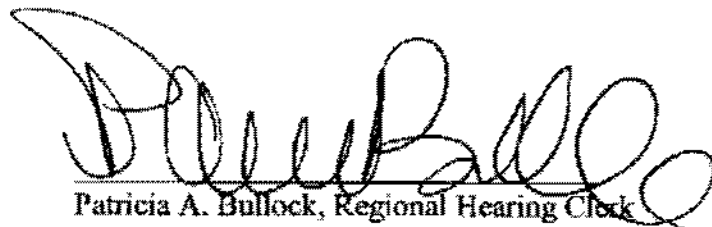
Mel Rechtman
RCRA and OPA Enforcement and Compliance Branch
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Via EPA's Internal Mail

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

Via EPA's Internal Mail and PDF

Date: 11-10-10



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
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 October 13, 2010
(Name) (Date)

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

- | | |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree
USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree
DOJ COLLECTS | <input type="checkbox"/> Oversight Billing - Cost Package required:
Sent with bill |
| <input type="checkbox"/> Other Receivable | <input type="checkbox"/> Not sent with bill |
| <input type="checkbox"/> This is an original debt | <input type="checkbox"/> Oversight Billing - Cost Package not required |
| | <input type="checkbox"/> This is a modification |

PAYEE: Bluegrass BioDiesel

The Total Dollar Amount of the Receivable: \$500.00
(If installments, attach schedule of amounts and respective due dates. See other side of this form.)

The Case Docket Number: CWA-04-2010-5025
The Site Specific Superfund Account Number: n

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 | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |