



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

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

SEP 18 2014

Mark D. Pierce  
President  
Nytis Exploration Company  
2480 Fortune Drive, Suite 300  
Lexington, Kentucky 40509

Re: Oil Spill Expedited Settlement Agreement  
Nytis Exploration Company  
NRC No. 1083842  
Docket No.: CWA-04-2014-5004(b)

Dear Mr. Pierce:

This letter is to notify Nytis Exploration Company (Nytis) that the Expedited Settlement Agreement (ESA) for the above-referenced matter has been signed by the U.S. Environmental Protection Agency and became effective on the date of filing with the Regional Hearing Clerk, as required by 40 C.F.R. §§ 22.6 and 22.31, as indicated on the Certificate of Service. The ESA is binding on the EPA and Nytis. A copy of the ESA is enclosed.

Pursuant to the ESA, Nytis shall submit the payment of \$500 within thirty (30) days of the receipt of this letter. The payment shall be made in one of the forms stated in Enclosure A. For additional payment information see EPA's payments webpage <http://www2.epa.gov/financial/makepayment>.

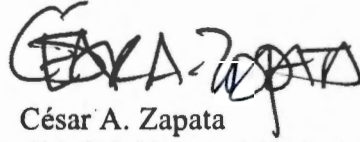
If paying by check, you shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the persons at the following addresses:

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

Tony D. Jenkins  
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 Tony D. Jenkins at (404) 562-8603.

Sincerely,

A handwritten signature in black ink, appearing to read "CÉSAR A. ZAPATA". The signature is stylized and somewhat cursive.

César A. Zapata  
Chief, RCRA and OPA Enforcement and  
Compliance Branch  
RCRA Division

cc: USCG



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

DOCKET NO.: CWA-04-2014-5004(b)

On May 22, 2014, at Long Branch Road, Fallsburg, Kentucky (Longitude 82-43-57.22 Latitude 38-12-55.12) the Nyttis Exploration Company (Respondent) discharged approximately 210 gallons of oil in violation of the Clean Water Act (CWA) § 311(b)(3), 33 U.S.C. § 1321(b)(3), as described on the attached "Findings and Alleged Violations Form" (Form), which is hereby incorporated by reference.

The United States Environmental Protection Agency finds that Respondent's conduct is subject to the discharge prohibition of CWA § 311(b)(3), 33 U.S.C. § 1321(b)(3) in conjunction with 40 C.F.R. § 110.3 Respondent admits being subject to CWA § 311(b)(3), and that the EPA has jurisdiction over Respondent and Respondent's conduct as described in the Form. Respondent neither admits nor denies the allegations in the Form.

The EPA is authorized to enter into this Expedited Settlement Agreement (ESA) under the authority vested in the Administrator of the EPA CWA § 311(b)(6)(B)(i), 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) and § 22.18(b)(2)-(3). The parties enter into this ESA in order to settle the civil violation described in the Form for a penalty of \$500 Respondent consents to the assessment of this penalty.

This ESA 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 \$150,000, and it has taken corrective actions that will prevent future spills. Respondent, also by signature on this ESA, agrees to pay the penalty assessed within thirty (30) calendar days of receiving written notice that the ESA has been executed and effective. **Do not enclose payment.** The EPA will provide instructions in writing on the procedures for making the penalty payment to the "Oil Spill Liability Trust Fund".

After the parties sign this ESA and Respondent pays the civil penalty, the EPA will take no further action against Respondent for the violations described in the Form. However, the EPA does not waive any rights to take any enforcement action for any other violations by Respondent of CWA § 311(b)(3) or any other federal statute or regulations.

Upon signing and returning this ESA to the EPA, Respondent waives any right to judicial review under CWA § 1321(b)(6)(G), 33 U.S.C. § 1321(b)(6)(G), any right to appeal or request a hearing to contest any fact or allegation, and consents to the EPA's approval of the ESA without further notice. Failure by Respondent to pay the penalty assessed by this ESA in full by its due date may subject Respondent to a civil action to collect the assessed penalty plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to CWA § 1321(b)(6)(H), 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

This ESA is binding on the parties signing below. Each person signing this ESA certifies that he or she has the authority to sign for the party who he or she represents and to bind that party to its terms. The ESA is effective upon the EPA's filing of the ESA with the Regional Hearing Clerk. If Respondent does not sign and return this ESA as presented within fourteen (14) calendar days of the date of its receipt, the proposed ESA will be withdrawn without prejudice to the EPA's ability to file any other enforcement action for the noncompliance identified in the Form.

APPROVED BY RESPONDENT:

Name (print): MARK D. PIERCE  
 Title (print): PRESIDENT  
 Signature: [Handwritten Signature]

APPROVED BY THE EPA:

[Handwritten Signature] Date 9/18/11  
 César A. Zapata  
 Chief, RCRA and OPA Enforcement and Compliance Branch  
 RCRA Division

RECEIVED  
EPA REGION IV  
2014 SEP 18  
MARKING CLERK

IT IS SO ORDERED:

[Handwritten Signature] Date 9/18/11  
 Susan B. Schub  
 Regional Judicial Officer

## **Findings and Alleged Violations Form Expedited Oil Spill Agreement**

1. Nyctis Exploration Company (Respondent) is a corporation organized under the laws of the State of Delaware with a place of business located at 2480 Fortune Drive, Suite 300 Lexington, Kentucky. Respondent is a person within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7) (Act).
2. Respondent is the owner or operator of an onshore facility within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), which is located at Long Branch Road, Fallsburg, Kentucky (Longitude 82-43-57.22 Latitude 38-12-55.12) (“facility”).
3. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3) 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 CWA, 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 the United States Environmental Protection Agency (“EPA”) has determined may be harmful to the public health, welfare or environment of the United States are defined in 40 C.F.R. § 110.3 to include discharges of oil that violate applicable water quality standards, or 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 the adjoining shorelines.
5. On May 22, 2014, Respondent discharged approximately 210 of gallons of oil, as defined in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F. R. §110.1, from its facility into or upon the East Fork of Little Sandy River and/or adjoining shorelines. The EPA obtained this information from the Respondent’s response to the EPA’s CWA Section 308 Information Request letter.
6. The East Fork of Little Sandy River, flows into the Ohio River. The Ohio River is a “navigable water of the United States”, as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1 and is subject to the jurisdiction of Section 311 of the CWA.
7. Respondent’s May 22, 2014, discharge of oil from its facility caused a film or sheen upon or discoloration of the surface of the East Fork of Little Sandy River and/or upon the adjoining shorelines, which eventually flows to the Ohio River and therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, which implements Section 311(b)(3) and (b)(4) of the CWA, 33 U.S.C. §1321(b)(3) and (b)(4).
8. Respondent’s May 22, 2014, discharge of oil from its facility into or upon the East Fork of Little Sandy River, and/or adjoining shorelines, which eventually flows to Ohio River, was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3 Respondent therefore violated Section 311(b)(3) of the CWA, 33 U.S.C. § 3121(b)(3). Pursuant to Section 311(b)(6)(B)(i) of the CWA, 33 U.S. C. § 3121(b)(6)(B)(i) 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.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the matter of Nytis Exploration Company, Docket Number: CWA-04-2014-5004(b), and have served the parties listed below in the manner indicated:

Teresa Mann  
Assistant Regional Counsel  
Office of RCRA, OPA and UST Legal Support  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

(Via EPA's electronic mail)

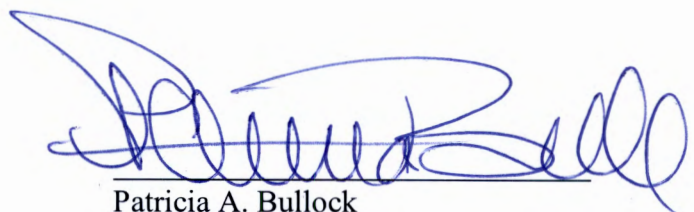
Quantindra Smith  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

(Via EPA's electronic mail)

Mark D. Pierce  
President  
Nytis Exploration Company  
2480 Fortune Drive Suite 300  
Lexington, Kentucky 40509

(Via Certified Mail - Return Receipt Requested)

Date: 9-18-14



Patricia A. Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9511