



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

September 28, 2010

RECEIVED  
SEP 28 2010  
EPA ORC  
Office of Regional Hearing Clerk

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

BY HAND

Re: In the Matter of Montreal Maine & Atlantic Railway, Ltd.  
CWA-01-2010-0048

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of an Administrative Complaint and Opportunity to Request a Hearing.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Maximilian Boal".

Maximilian Boal  
Enforcement Counsel

Enclosure

cc: Robert Grindrod, CEO  
Montreal Maine & Atlantic Railway

Thomas N. Tardif,  
Director, Real Estate & Environmental Affairs  
Montreal Maine & Atlantic Railway, Derby Facility

Phillip Buckley, Esq.,  
Rudman & Winchell

CC:

Robert Grindrod, CEO  
Montreal Maine & Atlantic Railway  
15 Iron Road  
Bangor, ME 04401

Thomas N. Tardif,  
Director, Real Estate & Environmental Affairs  
Montreal Maine & Atlantic Railway, Derby Facility  
18 B&A Avenue  
Milo, ME 04463

Phillip Buckley, Esq.,  
Rudman & Winchell  
84 Harlow Street  
PO Box 1401  
Bangor, ME 04402

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

RECEIVED  
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_____ )	
IN THE MATTER OF: )	<b>ADMINISTRATIVE COMPLAINT AND</b>
)	<b>NOTICE OF OPPORTUNITY TO REQUEST A</b>
)	<b>HEARING</b>
)	
MONTREAL MAINE & )	
ATLANTIC RAILWAY, LTD. )	Proceeding to Assess Class II Civil Penalty Under
18 B&A Avenue )	Clean Water Act Section 311 for SPCC and Oil
Milo, ME 04463 )	Spill Violations
)	
)	
Respondent. )	Docket No. CWA-01-2010-0048
_____ )	

**I. STATUTORY AUTHORITY**

1. This Administrative Complaint is issued under the authority vested in the U.S. Environmental Protection Agency (“EPA”) by Section 311(b)(6)(B)(ii) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990.

“Complainant” is the Director of the Office of Environmental Stewardship, EPA, Region 1.

2. Pursuant to Section 311(b)(6)(B)(ii) of the Act, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits,” codified at 40 C.F.R. Part 22 (“Part 22”), Complainant hereby provides notice of its proposal to assess a civil penalty against Montreal Maine & Atlantic Railway, Ltd. (“Respondent”) for its failure to comply with the Oil Pollution Prevention regulations set forth at 40 C.F.R. Part 112 promulgated under the authority of Section 311(j), 33 U.S.C. § 1321(j), and other provisions of the Act, 33 U.S.C. §§ 1251 et seq, and for its discharge of oil into or upon the navigable waters of the United States or adjoining

shorelines in a quantity that has been determined may be harmful, in violation of Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3). This Complaint also provides notice of Respondent's opportunity to file an Answer to this Complaint and to request a hearing on the proposed penalty.

3. Section 311(j)(1) of the Act, 33 U.S.C. § 1321(j)(1), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore and offshore facilities, and to contain such discharges . . . ."

4. Under the authority of Section 311(j)(1) of the Act, the Oil Pollution Prevention regulations establish procedures, methods, and requirements for preventing the discharge of oil. These requirements apply to owners or operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products that, due to their location, could reasonably be expected to discharge oil in harmful quantities (as defined in 40 C.F.R. Part 110) to navigable waters of the United States or adjoining shorelines. 40 C.F.R. § 112.1(b).

5. Under 40 C.F.R. § 112.3, the owner or operator of an onshore facility that became operational prior to August 16, 2002, that has discharged or, due to its location, could reasonably be expected to discharge, oil in harmful quantities into or upon the navigable waters of the United States shall have maintained and implemented a Spill Prevention Control and Countermeasure ("SPCC") Plan in accordance with 40 C.F.R. § 112.7.

6. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil,

as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), into or upon the navigable waters of the United States or adjoining shorelines in such quantities as may be harmful, as determined under Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4).

7. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the Act, EPA has determined that an oil discharge “may be harmful” to the public health or welfare or the environment of the United States if it causes either: (1) a violation of applicable water quality standards; or, (2) a film or sheen upon, or discoloration of the surface of the water or adjoining shorelines; or, (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines (“harmful quantity”).

8. “Navigable waters” of the United States are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), as “waters of the United States” and are further defined in 40 C.F.R. § 110.1.

## **II. GENERAL ALLEGATIONS**

9. Respondent is a corporation organized under the laws of Delaware with its headquarters located at 15 Iron Road, Bangor, Maine, and, therefore, is a “person” within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

10. Respondent is the “owner or operator” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of a railway maintenance facility located at 18 B&A Avenue, Milo, Maine (the “facility”).

11. At all times referenced in this Complaint, the facility had an aggregate aboveground oil storage capacity greater than 1,320 gallons.

12. Respondent is engaged in storing, using, and consuming “oil” or oil products located at the facility within the meaning of 40 C.F.R. §§ 112.2 and 112.1(b).

13. The facility is an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

14. The facility is a “non-transportation-related” facility within the meaning of 40 C.F.R. § 112.2 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

15. The facility has grated floor drains in the boiler room, which discharge its contents below the surface outside the boiler room. Outside the boiler room there is a section of a roof drain pipe underground. The roof drain flows into a catch basin, which flows into a main storm drain, which flows into the Piscataquis River. The Piscataquis River flows into the Penobscot River, which flows into the Penobscot Bay, which becomes the Atlantic Ocean. The Piscataquis River is roughly 2,500 feet from the facility. The topography leading from the facility to the Piscataquis River presents a clear path into navigable waters. Due to the location of the facility with respect to the Piscataquis River and the topography of the area, the facility could reasonably be expected to discharge oil into the Piscataquis River and the downstream bodies of water.

16. The Piscataquis River, Penobscot River, Penobscot Bay, and the Atlantic Ocean are “navigable waters of the United States” and are subject to the jurisdiction of Section 311 of the Act, 33 U.S.C. § 1321, as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

17. Based on the allegations in paragraphs 9 through 16 above, Respondent is the owner and operator of a non-transportation-related facility engaged in storing, using, and consuming oil

or oil products that could reasonably be expected to discharge oil in harmful quantities to navigable waters of the United States, and is, therefore, subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112.

### **III. VIOLATIONS**

#### **Count I: Failure to Maintain and Implement an SPCC Plan in Violation of**

#### **40 C.F.R. § 112.3**

18. On November 20, 2009, an authorized EPA representative, who was at the facility to respond to an oil spill that occurred at the facility on October 2, 2009, inspected the facility for compliance with Section 311(j) of the Act, in particular, the requirements of the Oil Pollution Prevention regulations.

19. Under 40 C.F.R. § 112.3, the owner or operator of an SPCC-regulated facility in operation prior to August 16, 2002, shall have maintained and implemented an SPCC plan that is in accordance with the requirements of 40 C.F.R. § 112.7.

20. Respondent has owned and operated the facility for at least five years.

21. EPA determined that the facility had neither maintained nor fully implemented an SPCC Plan, in violation of Section 311(j) of the Act. Respondent failed to adequately provide for measures which would prevent the discharge of oil from reaching waters of the United States and failed to implement specific requirements listed in 40 C.F.R. §§ 112.7 and 112.8, in accordance with good engineering practice. Respondent's failure to maintain and fully implement an SPCC plan, includes, but is not limited to the following deficiencies: The facility lacked appropriate secondary containment for some of its aboveground bulk oil storage tanks;

The facility's SPCC plan did not contain a diagram with the location and contents of all regulated containers, transfer stations, and connecting pipes; The facility's SPCC plan did not include periodic testing of bulk storage containers and leak testing of the valves and piping associated with each bulk storage container; The facility lacked adequate security; The facility's loading/unloading connections of oil pipelines and/or facility piping were not securely capped or blank-flanged when not in service or when in standby service for an extended period of time; The facility's loading/unloading rack at the tank car or tank truck did not have an adequate containment system to hold capacity of the largest single compartment; The facility's aboveground containers were not integrity tested, and there were no records of inspections or tests in the SPCC plan; A facility employee was not present to monitor gauges and the overall filling of bulk storage containers at the time of the spill.

22. Respondent's failure to maintain and implement an SPCC plan for the facility in accordance with the requirements of 40 C.F.R. § 112.7, as described above, violated 40 C.F.R. § 112.3. Respondent violated these requirements for each day for the period of violation, which was for a total of at least 1,826 days.<sup>1</sup>

### **Count II: Illegal Discharge of Oil into Waters of the United States**

23. At approximately 2:30 P.M. on October 2, 2009 Respondent's employee initiated a transfer of #2 fuel oil from a 30,000 gallon heating oil tank car to a 1,000 gallon day tank located in the facility's boiler room. The employee conducting the transfer was called to attend to

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<sup>1</sup> EPA is not, however, pursuing penalties for violations of 40 C.F.R. Part 112 beyond the federal five year statute of limitations found at 28 U.S.C. § 2462. Five years equals 1,826 days of violation.



Presiding Officer will notify the parties of his assignment, and shall notify the parties of the time and place of further proceedings in the case.

#### **VI. PUBLIC NOTICE**

32. Pursuant to Section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C), the Complainant is providing public notice of and reasonable opportunity to comment on this proposed issuance of a Final Order assessing administrative penalties against Respondent. If a hearing is held on this matter, members of the public who submitted timely comments on this proceeding have the right under Section 311(b)(6)(C) of the Act to be heard and present evidence at the hearing.

#### **VII. SETTLEMENT**

33. You may request an informal conference with Complainant's attorney, Maximilian Boal, concerning the alleged violations and the amount of the proposed penalty. A request for an informal conference does not extend any deadline in this proceeding, including the deadline by which you must submit an Answer to this Complaint.

34. If you have any questions concerning the enclosed Consent Agreement or the settlement process, or wish to arrange for an informal conference, please contact Maximilian Boal at (617) 918-1750.

Date: 09/28/10

Susan Studlien

Susan Studlien  
Director, Office of Environmental Stewardship  
U.S. Environmental Protection Agency  
Region 1

**In the Matter of Montreal Maine & Atlantic Railway, Ltd.  
CWA-01-2010-0048**

**CERTIFICATE OF SERVICE**

I certify that the foregoing Compliant was transmitted to the following persons, in the manner specified, on the date below:

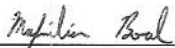
Original and one copy  
hand-delivered:

Wanda Santiago,  
Regional Hearing Clerk  
U.S. EPA – Region I  
5 Post Office Square, Suite 100  
Mail Code: ORA18-1  
Boston, MA 02109-3912

Copy and copy of Part 22 Rules  
by certified mail, return receipt  
requested:

Robert Grindrod, CEO  
Montreal Maine & Atlantic Railway  
15 Iron Road  
Bangor, ME 04401

Dated: 9-28-2010

  
\_\_\_\_\_  
Maximilian Boal  
Enforcement Counsel  
U.S. EPA – Region I  
5 Post Office Square, Suite 100  
Mail Code: OES04-2  
Boston, MA 02109-3912