



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

FEB 19 2009

Ref: 8ENF-UFO

**SENT VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

William M. Fulton, Registered Agent  
Fulton Fuel Company  
127 Main Street  
Shelby, MT 59474

Re: In the Matter of Fulton Fuel Company, North Sunburst B  
Sand Unit, Docket No. **CWA-08-2009-0006**  
Administrative Complaint and Notice of Opportunity  
to Request Hearing

Dear Mr. Fulton:

Enclosed please find an Administrative Complaint and Notice of Opportunity to Request Hearing (Complaint) issued by the U.S. Environmental Protection Agency (EPA) pursuant to its authority under section 311(b)(6)(B) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6)(B). The complaint is based on alleged violations for the discharge of oil into navigable waters of the United States and of the oil pollution prevention regulations set forth at 40 C.F.R. part 112 at the North Sunburst B Sand Unit facility which was owned and operated by Fulton Fuel Company on February 29, 2004, through at least January 1, 2005.

Specifically, the complaint alleges that Fulton Fuel Company discharged oil into Fred and George Creek and its adjoining shorelines and failed to prepare and implement a Spill Prevention, Control and Countermeasures (SPCC) plan, including failure to conduct and document inspections of its flowlines, for the North Sunburst B Sand Unit facility in accordance with 40 C.F.R. §§ 112.7, 112.9 and 112.10 as required by 40 C.F.R. § 112.3. EPA discovered the SPCC violations after a 308 Information Request was issued on May 15, 2006, to Fulton Fuel Company. The Complaint proposes a penalty of \$32,500.

Fulton Fuel Company has the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or the allegations are found to be true after you have had an opportunity for a hearing, you have the right to contest the penalty proposed in the Complaint.

A copy of EPA's administrative procedures is enclosed for your review. Please note the requirements for an Answer set forth in 40 C.F.R. §§ 22.15 and 22.38. If you wish to contest the allegations or the penalty proposed in the Complaint, you must file a written Answer within thirty (30) days of receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:

Ms. Tina Artemis, Regional Hearing Clerk (8RC)  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

If you do not file an Answer by the applicable deadline, you will have defaulted and each allegation in the Complaint will be deemed to be admitted as true. You will have waived your right to appear in this action for any purpose and will also have waived your right to be notified of any Agency proceedings that occur before a civil penalty may be imposed. Provided that the Complaint is legally sufficient, EPA may file a motion for default for the amount proposed in the Complaint.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations or the proposed penalty amount. You have the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but it is not required. A request for an informal conference does not extend the thirty (30) day period for filing your Answer and/or requesting a hearing.

If you have any questions, the most knowledgeable people on my staff regarding this matter are Marc Weiner and Jane Nakad. Mr. Weiner is in our Legal Enforcement Program and can be reached at (303) 312-6913. Ms. Nakad is in our OPA Technical Enforcement Program and can be reached at (303) 312-6202.

Sincerely,



Mark A.R. Chalfant, Director  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures: Complaint and Notice of Opportunity to Request Hearing  
Consolidated Rules of Practice, 40 C.F.R. Part 22  
SBREFA Information Sheet  
Notice of SEC Disclosure

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

7/17/09 11:14 AM

IN THE MATTER OF	)	Docket No. <b>CWA-08-2009-0006</b>
	)	
Fulton Fuel Company	)	<b>ADMINISTRATIVE COMPLAINT AND</b>
127 Main Street	)	<b>OPPORTUNITY TO REQUEST HEARING</b>
Shelby, Montana 59474	)	
	)	Proceeding to Assess Class I
	)	Civil Penalty Under Section 311
	)	of the Clean Water Act
<u>Respondent</u>	)	

**AUTHORITY**

This is a civil administrative action issued under the authority vested in the Administrator of the Environmental Protection Agency (EPA) by section 311(b)(6)(B)(i) of the Clean Water Act (CWA or the Act), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990. The Administrator has properly delegated this authority to the undersigned EPA official. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules) set forth at 40 C.F.R. part 22, a copy of which is enclosed.

**GENERAL ALLEGATIONS**

1. Respondent, Fulton Fuel Company, is incorporated in the state of Montana.
2. At all times pertinent to this complaint (Complaint), Respondent was a "person" within the meaning of sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5).
3. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States or the 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 the adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.
5. The Respondent owned and operated an oil production facility known as the North Sunburst B Sand Unit, which was located in the North Fred and George Creek Field in Toole County, Montana (facility).
6. At all times pertinent to this Complaint, the facility included at least one 250 barrel (10,500 gallon) crude oil tank, three producing oil wells, and several flowlines.
7. Crude oil is an oil within the meaning of “oil” as defined at § 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).
8. From February 29, 2004, until January 2005, Respondent produced, stored, transferred, distributed, used or consumed oil or oil products at the facility.
9. At all times pertinent to this Complaint, Respondent was an “owner or operator” of an “onshore facility” within the meaning of sections 311(a)(6) and (10) of the Act, 33 U.S.C. §§ 1321(a)(6) and (10).
10. At all times pertinent to this Complaint, the facility was a “non-transportation related” onshore facility within the meaning of 40 C.F.R. § 112.2.

11. On or about February 29, 2004, Respondent discharged approximately 10 barrels (420 gallons of 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 Fred and George Creek and its adjoining shorelines.
12. Fred and George Creek is a tributary to Miners Coulee, which flows into Canada and into the Milk River, a perennial international water. The Milk River flows into the United States and into the Missouri River, a perennial interstate water.
13. Fred and George Creek, Miners Coulee, the Milk River and the Missouri River are “navigable waters” and “waters of the United States” within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.
14. Respondent's February 29, 2004, discharge of oil from its facility caused (1) a sheen upon or discoloration of the surface of Fred and George Creek and a sludge or emulsion to be deposited beneath the surface of Fred and George Creek and its adjoining shorelines, 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, 33 U.S.C. §§ 1321(b)(3) and (b)(4).
15. Oil stains on the banks of Fred and George Creek or oil sheens on Fred and George Creek were observed as documented in photographs taken on June 17, 2004; August 31, 2004; December 10, 2004; August 30, 2005; September 29, 2005; and May 4, 2006.
16. Respondent's February 29, 2004, discharge of oil from its facility into or upon Fred and George Creek and its adjoining shorelines was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3 and violated Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).
17. As alleged in Paragraph 14, and pursuant to Section 311(b)(6)(B)(i), 33 U.S.C.

§ 1321(b)(6)(B)(i), of the Act and 40 C.F.R. § 19, the Respondent is liable for civil penalties of up to \$27,500.

18. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil ... from vessels and from onshore and offshore facilities, and to contain such discharges ...."
19. EPA promulgated the oil pollution prevention regulations, set forth at 40 C.F.R. part 112. 40 C.F.R. § 112.1(b) states that the requirements of part 112 apply:

to owners or operators of non-transportation related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines ...."
20. At all times pertinent to this Complaint, the facility was a non-transportation related onshore facility which, due to its location, could reasonably have been expected to discharge oil to a navigable water of the United States (as defined by section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1) or the adjoining shorelines that would have either (1) violated applicable water quality standards or (2) caused a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or caused a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.
21. At all times pertinent to this Complaint, the facility was subject to the oil pollution prevention requirements of 40 C.F.R. part 112, pursuant to section 311(j) of the Act, 33 U.S.C. § 1321(j), and its implementing regulations.
22. 40 C.F.R. § 112.3 requires that owners or operators of onshore and offshore

facilities prepare a Spill Prevention, Control, and Countermeasure (SPCC) plan in writing, and in accordance with applicable sections of part 112, including, but not limited to, sections 112.7, 112.9 and 112.10.

23. Section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A), states in pertinent part that “any owner, operator, or person in charge of any vessel, onshore facility or offshore facility (ii) who fails or refuses to comply with any regulation issued under subsection (j) of this section to which that owner, operator, or person in charge is subject, may be assessed a class I or class II civil penalty by ... the Administrator.”
24. At the time of Respondent's February 29, 2004, discharge of oil the facility had a total crude oil storage capacity of at least 10,500 gallons.
25. The facility did not have a written SPCC plan at the time of the discharge through January 2005 when the facility was sold to another entity.
26. The following SPCC implementation measure was subsequently found to be deficient: failure to conduct inspections and adequately maintain its flowlines and keep records (40 C.F.R. § 112.7(e)).
27. Respondent failed to prepare and implement an SPCC plan in writing and in accordance with the regulations at 40 C.F.R. §§ 112.7, 112.9 and 112.10 as required by 40 C.F.R. § 112.3.
28. Respondent's failure to prepare and implement an SPCC plan in writing and in accordance with the regulations at 40 C.F.R. §§ 112.7, 112.9 and 112.10 from February 29, 2004, through and including January 1, 2005 (a duration of approximately 10 months), constitutes violations of 40 C.F.R. § 112.3 and sections 311(b)(6)(A), 33 U.S.C. § 1321(b)(6)(A), and 311(j)(1)(C), 33 U.S.C. § 1321(j)(1)(C) of the Act.

29. As alleged in the preceding Paragraphs, and pursuant to Section 311(b)(6)(B)(i), 33 U.S.C. § 1321(b)(6)(B)(i), of the Act and 40 C.F.R. § 19.4, the Respondent is liable for civil penalties of up to \$32,500.

### **PROPOSED PENALTY**

Based on the foregoing Allegations and pursuant to the authority of section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), Complainant proposes the assessment of administrative penalties against the Respondent of \$32,500 for the spill and the SPCC violations. Complainant proposes this penalty amount after considering the applicable statutory penalty factors in section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8): Respondent's alleged violations, the seriousness of the violations, the economic benefit to the violator resulting from the violations, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other factors as justice may require.

The environmental impact of the discharge of oil was considered moderate as there was no significant threat to human health, a drinking water supply, a sensitive ecosystem or wildlife, but there was a direct impact to Fred and George Creek and its adjoining shorelines and vegetation. There was an addition made to the penalty for culpability due to the lack of an adequate documented inspection and maintenance program for the flowline from which the discharge occurred. An addition to the penalty was also made due to the inadequate response and mitigation of the discharge since oil staining of Fred and George Creek and its banks occurred periodically for at least twenty-six (26) months after the discharge. Economic benefit derived from failure to implement an adequate flowline inspection and maintenance program was factored into the penalty.



The proposed penalty amount is based on moderate non-compliance due to Respondent's failure to prepare an SPCC plan and conduct and document inspections and maintenance of flowlines at the facility. A moderate environmental impact was assessed because a discharge from the facility would have a significant impact on Fred and George Creek which flows through the facility. No additions were made for culpability as the owner/operator is a small operator with limited resources. The Respondent did not qualify for any penalty reduction based on mitigation factors. No additions were made to the proposed penalty amount based on a history of violations as there is no evidence of a non-compliance history. Economic benefit the Respondent derived for its failure to prepare and implement an SPCC Plan was factored into the penalty.

#### **TERMS OF PAYMENT FOR QUICK RESOLUTION**

If Respondent does not contest the findings and penalty proposal set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within thirty (30) calendar days of receipt of this Complaint, no Answer need be filed. For more time for payment, Respondent may file a statement agreeing to pay the penalty within thirty (30) days of receipt of the Complaint, then pay the money within thirty (30) days of such receipt. 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 the case written on the check. If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

If the Respondent sends payment by overnight mail, the payment should be sent to:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Natalie Pearson  
314-418-4087

Wire transfers should be directed to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D68010727 Environmental Protection Agency".

The Respondent shall submit copies of the check (or in the case of a wire transfer, copies of the confirmation) to the following persons:

Tina Artemis, Regional Hearing Clerk (8RC)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

and

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

Respondent states, under penalty of perjury, that it has investigated the cause of the spill and cleaned up the spill pursuant to federal requirements.

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 has not cleaned

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

Payment of the penalty in this manner does not relieve Respondent of its obligation to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

### **OPPORTUNITY TO REQUEST A HEARING**

As provided in the Act, a Respondent has the right to a public hearing to contest this Complaint. If you (1) contest the factual claims made in this Complaint; (2) contest the appropriateness of the proposed penalty; and/or (3) assert that you are entitled to judgment as a matter of law, you must file a written Answer in accordance with section 22.15 and 22.38 of the Consolidated Rules within thirty (30) calendar days after receipt of this Complaint. Your Answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which you have knowledge; (2) state circumstances or arguments which are alleged to constitute grounds for defense; (3) state the facts you dispute; (4) the basis for opposing the proposed relief, and (5) specifically request an administrative hearing, if desired. Failure to admit, deny, or explain any material factual allegation in this Complaint will constitute an admission of the allegation.

The Answer and one copy must be sent to:

Tina Artemis, Regional Hearing Clerk (8RC)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

and a copy must be sent to the following attorney:

Marc Weiner, Enforcement Attorney (8ENF-L)  
U.S. EPA Region 8, Legal Enforcement Program  
1595 Wynkoop Street  
Denver, CO 80202-1129  
Telephone: (303) 312-6813

IF YOU FAIL TO REQUEST A HEARING, YOU WILL WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF YOU FAIL TO FILE A WRITTEN ANSWER OR PAY THE PROPOSED PENALTY WITHIN THE THIRTY (30) CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R. § 22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.

#### **SETTLEMENT CONFERENCE**

The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations and is willing to explore this possibility in an informal settlement conference. If you or your attorney, if you choose to be represented by one, have any questions or wish to have an informal settlement conference with EPA, please call Marc Weiner at (303) 312-6913. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an Answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in the Consolidated Rules. If a settlement can be reached, its terms must be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Regional Judicial Officer.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8

Complainant

Date: 2/19/2009 Mark A.R. Chalfant  
Mark A.R. Chalfant, Director  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Date: 2/19/09 Michael T. Risner  
Michael T. Risner, Director  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Date: 2/19/09 Marc Weiner  
Marc Weiner, Enforcement Attorney  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129  
Telephone: 303/312-6913  
Facsimile: 303/312-7202

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the original and one copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING was hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent via certified mail to:

William M. Fulton  
Registered Agent for Fulton Fuel Company  
127 Main Street  
Shelby, MT 59474

and

Richard L. Beatty  
Attorney at Law  
153 Main Street  
Shelby, MT 59474

2/19/09  
Date

Judith McTernan  
Judith McTernan