



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

JAN 10 2012

CERTIFIED MAIL # 7005-3110-0000-5950-5076  
RETURN RECEIPT REQUESTED

Spencer Foreman, M.D.  
President-CEO,  
Montefiore Medical Center  
111 East 210th Street  
Bronx, NY 10467

RE: Notice of Proposed Assessment of a Civil Penalty  
Docket No. CWA-02-2012-3801

Dear Mr. Pfleging:

Enclosed is a document entitled "Administrative Complaint and Opportunity to Request Hearing and Conference," hereinafter referred to as the "Complaint." This Complaint has been issued against Montefiore Medical Center ("Respondent"), under the authority of Section 311(b)(6) of the Clean Water Act ("Act"), 33 U.S.C. §1321(b)(6). In the Complaint, the United States Environmental Protection Agency ("EPA") alleges that the Respondent's facilities, located at 111 East 210th Street and 3400 Bainbridge Avenue, Bronx, NY 10467, have violated the Act. The alleged violations are specifically set out under "Specific Claims" in the Complaint. The amount of the civil penalty proposed to be assessed is \$131,099.

For purposes of determining the amount of any penalty to be assessed, Section 311(b)(8) of the Act requires EPA to take into account the following factors: the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the economic impact of the penalty on the violator, and any other matters as justice may require. To determine the penalty proposed in the Complaint, EPA has taken into account the statutory factors with respect to the particular facts and circumstances of this case, to the extent known at this time.

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2012 JAN 10 P 2:13  
REGIONAL HEARING  
CLERK

By law, the Respondent has the right to request a hearing regarding the violations alleged in the Complaint and the proposed civil penalty. A request for a hearing must be contained in a written Answer to the Complaint. In accordance with 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; Final Rule," (hereinafter "Consolidated Rules") Fed. Reg. Volume 64, Number 141 (copy enclosed), the Respondent must file a written Answer with the Regional Hearing Clerk within thirty (30) days of receipt of this Complaint if the Respondent contests any material fact upon which the Complaint is based, contends that the proposed penalty is inappropriate or contends that it is entitled to judgment as a matter of law. If the Respondent does not file a timely Answer in accordance with the requirements specified in the Consolidated Rules, the Respondent may be found in default and the proposed civil penalty may be assessed without further proceedings. The Respondent has the right to be represented by an attorney, or to represent itself at any stage of these proceedings.

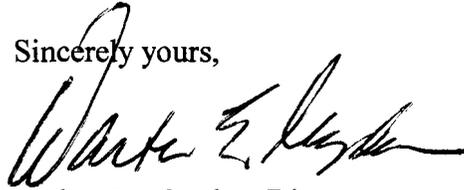
EPA encourages all parties against whom it files a Complaint to pursue settlement discussions with the Agency. Whether or not the Respondent requests a formal hearing, the Respondent may request an informal conference with EPA to discuss the alleged violations and the proposed civil penalty. Specifically, EPA invites information pertaining to the factors in Section 311(b)(8) of the Act. The penalty may be adjusted if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty. The Respondent may represent itself or be represented by an attorney at any conference, whether in person or by telephone. An attorney from the Agency's Office of Regional Counsel (ORC) will normally be present at any informal conference. Please be advised that any informal conferences conducted in person with Agency officials will be held in EPA Region 2's offices in either New York City or in Edison, New Jersey. Please also be advised that a request for an informal conference does not substitute for a written Answer nor does it extend the period of time (thirty days) within which you must file an Answer and request a hearing.

If a mutually satisfactory settlement can be reached, it will be formalized by the issuance of a Consent Agreement signed by you and a Final Order signed by the Regional Administrator, EPA Region 2. The issuance of such a Consent Agreement and Final Order shall constitute a waiver by the Respondent of its right to a hearing on, and to a judicial appeal of, the agreed upon civil penalty. If you have any questions or wish to discuss the possibility of settlement of this matter, please contact:

Tim Murphy, Esq.  
U.S. Environmental Protection Agency  
290 Broadway - 16th Floor  
New York, New York 10007-1866  
Telephone: (212) 637-3236

We urge your prompt attention to this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Walter E. Mugdan". The signature is fluid and cursive, with a prominent initial "W" and a long, sweeping tail.

Walter E. Mugdan, Director  
Emergency and Remedial Response Division

Enclosures

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

IN THE MATTER OF:

Montefiore Medical Center  
111 East 210th Street and  
3400 Bainbridge Avenue  
Bronx, NY 10467

Respondent

Proceeding Pursuant to §311(b)(6) of the  
Clean Water Act, 33 U.S.C. §1321(b)(6), for  
SPCC Violations

Proceeding to Assess Class II Civil  
Penalty Under Section 311(b)(6) of  
the Clean Water Act

Docket No. CWA-02-2012-3801

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2012 JAN 10 P 2:13  
REGIONAL HEARING  
CLERK

**COMPLAINT  
FINDINGS OF VIOLATION, NOTICE OF PROPOSED  
ASSESSMENT OF A CIVIL PENALTY, AND  
NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

**I. Statutory Authority**

1. This Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing ("Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b) (6) (B) (i) of the Clean Water Act ("Act"), 33 U.S.C. §1321(b) (6) (B) (i). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Emergency and Remedial Response Division ("ERRD") of EPA, Region 2 ("Complainant").
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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("CROP"), codified at 40 CFR Part 22 ("Part 22"), a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Montefiore Medical Center ("Respondent") for its failure or refusal to comply with the Spill Prevention Control and Countermeasure ("SPCC") regulations to which

Respondent is subject at its facility located at 111 East 210th Street and 3400 Bainbridge Avenue, Bronx, NY 10467, as set forth at 40 CFR Part 112 pursuant to the authority of Section 311(j)(33 U.S.C. §1321(j)) and other provisions of the Act, [33 U.S.C. §§ 1251], and give notice of Respondent's opportunity to file an Answer to this Complaint and to request a hearing on the proposed penalty assessment.

## **II. Findings of Violation**

### JURISDICTIONAL ALLEGATIONS

1. The Respondent is a not-for-profit, privately-owned business organized under the laws of the State of New York in 1884, with a place of business located at 111 East 210th Street and 3400 Bainbridge Avenue, Bronx, NY 10467. The Respondent is a person within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. §1321(a)(7) and 40 CFR §112.2.
2. The Respondent is the "owner and operator" within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. §1321(a)(6), and 40 CFR §112.2, of bulk oil storage facilities, located at 111 East 210th Street and 3400 Bainbridge Avenue, Bronx, NY 10467, the Respondent's premises (hereinafter collectively referred to as "Facilities").
3. The Respondent is engaged in storing, using or consuming oil or oil products located at the Facility.
4. The Facility has an aggregate aboveground storage capacity of greater than 1320 gallons of oil in containers each with a shell capacity of at least 55 gallons.
5. 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 CFR 112.2, which due to its location, could reasonably be expected to discharge oil, as covered by 40 CFR 110.3, 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 CFR §§110.1 and 112.2) or its adjoining shoreline in a manner that may either (1) violate applicable water quality standards, or (2) cause a film or sheen 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 adjoining shorelines.
6. The Facilities are "non-transportation-related facilities" under the definition incorporated by reference at 40 CFR §112.2 and set forth in an appendix thereto and published on December 18, 1971, in Volume 36 of the Federal Register, at page 24,080.

7. 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 vessel and from onshore and offshore facilities, and to contain such discharges.... ”
8. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to the EPA his Section 311(j)(5) authority to issue the regulations referenced in the preceding paragraph for non-transportation-related onshore facilities.
9. The EPA subsequently promulgated regulations, codified at 40 CFR Part 112, as amended by 67 Fed. Reg. 47140, *et seq.*, July 17, 2002, (“the SPCC regulations”), pursuant to these delegated statutory authorities, and pursuant to its authorities under the Act, 33 U.S.C. § 1251, *et seq.*, which set forth certain procedures, methods and requirements for each owner and operator of a facility meeting the description in Paragraphs 3 through 6 above if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantities as EPA has determined in 40 CFR Part 110 may be harmful to the public health or welfare or the environment of the United States.
10. Based on the above and pursuant to Section 311(j) of the Clean Water Act and its implementing regulations, the Respondent is subject to the Oil Pollution Prevention requirements of 40 CFR Part 112, the SPCC regulations.

#### SPECIFIC CLAIMS

1. Under 40 CFR §112.3(a), the owner or operator of an SPCC-regulated facility that began operations before January 10, 1974, shall have prepared an SPCC plan not later than January 10, 1975.
2. The Respondent’s Facilities began operations before January 10, 1974.
3. Under 40 CFR § 112.3(a), the SPCC Plan must be prepared in writing and in accordance with 40 CFR §112.7 and 40 CFR §112.8.
4. During inspection of the Respondent’s Facility by EPA on October 14, 18 and 19, 2010, the Complainant determined that the Respondent had not prepared an SPCC Plan in accordance with 40 CFR §112.7 and 40 CFR §112.8, in violation of 40 CFR §112.3(a). (See Attachment A, attached hereto and incorporated herein).

5. Under 40 CFR §112.3(a), the owner or operator of an SPCC-regulated facility that began operations before January 10, 1974, shall have fully implemented an SPCC Plan no later than January 10, 1975.
6. During an inspection of the Respondent's Facilities by the EPA on October 14, 18 and 19, 2010, the Complainant determined that the Respondent had not fully implemented an SPCC Plan at the Facility, in violation of 40 CFR §112.3(a). (See Attachment B, attached hereto and incorporated herein).
7. Under 40 CFR §112.5(a), the owner or operator of an SPCC-regulated facility shall amend the SPCC Plan when there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge.
8. During inspections of the Respondent's Facility on October 14, 18 and 19, 2010, the Complainant determined that the Respondent had not amended the SPCC Plan following changes in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge, in violation of 40 CFR §112.5(a). (See Attachment C, attached hereto and incorporated herein).

#### CLAIM FOR RELIEF

1. Complainant realleges and incorporates by reference the allegations in Paragraphs 1 through 8 in the Specific Claims above.
2. As alleged in Paragraph 4 above, the Respondent's failure to prepare an SPCC Plan for the Facility in accordance with 40 CFR §112.7, violated regulations issued under Section 311(j) of the Act. Pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 CFR §19.4, the Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.
3. As alleged in Paragraph 6 above, the Respondent's failure to fully implement its SPCC Plan for the Facilities as required by 40 CFR §112.3(a), violated regulations issued under Section 311(j) of the Act. Pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 CFR §19.4, the Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.
4. As alleged in Paragraph 8 above, the Respondent's failure to amend the SPCC Plan following changes in the facility design, construction, operation, or

maintenance that materially affects its potential for a discharge, as required by 40 CFR §112.5(a), violated regulations issued under Section 311(j) of the Act. Pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 CFR §19.4, the Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

### **III. Notice of Proposed Order Assessing a Civil Penalty**

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 311(b)(6)(B)(i) the Act, 33 U.S.C. §1321(b)(6)(B)(i), and the Debt Collection Improvement Act of 1996, EPA, Region 2 hereby proposes the issuance of a Final Order Assessing Administrative Penalties ("Final Order") to Respondent assessing a civil penalty of One Hundred Thirty One Thousand and Ninety Nine Dollars (\$131,099). EPA determined the proposed penalty after taking into account the applicable factors identified in Section 311(b)(8) of the Act, 33 U.S.C. §1321(b)(8). These are: the seriousness of the violations, the economic benefit to the violator, if any, resulting from the violations, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the economic impact of the penalty on the violator, and any other matters as justice may require.

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case, to the extent known to Complainant at the time of this Complaint.

Based on the Findings set forth above, at a minimum, Respondent has been found to have violated the Act and failed to comply with the related SPCC regulations (i.e. development and implementation of a SPCC Plan according to the applicable regulations, etc.), developed to ensure prevention and minimization of contamination of navigable waters of the United States or adjoining shorelines by preventing discharges of oil from facilities and to contain such discharges. The violations discussed in this Complaint are serious and have a potential direct effect on human health and the environment. Respondent obtained an economic benefit as a result of its noncompliance with the Act and the SPCC regulations. Further, Respondent has a history of violations. Respondent should have known of its obligations and complied with the applicable SPCC regulations and the Act. All of these factors are identified in Section 311(b)(8) of the Act, 33 U.S.C. §1321(b)(8).

### **IV. Procedures Governing This Administrative Litigation**

The rules of procedure governing this civil administrative litigation have been set forth in

the CROP, which has been codified at 40 CFR Part 22. A copy of these rules accompanies this Complaint.

#### **A. Answering the Complaint**

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 CFR § 22.15(a) The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 17th floor  
New York, New York 10007-1866**

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 CFR §22.15(a)

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 CFR §22.15(b) Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 CFR §22.15(b) The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether Respondent requests a hearing.

40 CFR §22.15(b)

Respondent's failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

#### **B. Opportunity To Request A Hearing**

If requested by Respondent in its Answer, a hearing may be held upon the issues raised by the Complaint and Answer may be held. 40 CFR §22.15(c) If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 CFR §22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 CFR §22.15(c)

Any hearing in this proceeding will be held at a location determined in accordance with 40 CFR §22.21(d). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§551-59, and the procedures set forth in Subpart D of the CROP, 40 CFR Part 22, Subpart D).

Should Respondent request a hearing on this proposed penalty assessment, members of the public to whom EPA is obligated to give notice of this proposed action, will have a right under Section 311(b)(6)(C)(i) of the Act, 33 U.S.C. §1321(b)(6)(C)(i) to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondent not request a hearing, EPA will issue a Final Order, and only members of the public who submit timely comment on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

### **C. Failure To Answer**

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation.

40 CFR §22.15(d) If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 CFR §22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 CFR §22.17(a) Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 CFR §22.17(a) Following a default by Respondent for failure to timely file an Answer to the Complaint, any order issued thereafter shall be issued pursuant to 40 CFR §22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 CFR §22.27(c). 40 CFR §22.17(d) If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court.

### **V. Informal Settlement Conference**

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations.

40 CFR §22.18(b) At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the

proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 CFR §22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Tim Murphy, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866  
(212) 637-3236

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 CFR §22.18(b)(1) Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 CFR §22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 CFR §22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 CFR §22.18(b)(2) In accepting the Consent Agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the Final Order that is to accompany the Consent Agreement. 40 CFR §22.18(b)(2) In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 CFR §22.18(b)(3)

Respondent's entering into a settlement through the signing of such Consent Agreement

and its complying with the terms and conditions set forth in the such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entry into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

## **VI. Resolution of this Proceeding Without Hearing or Conference**

If you wish to settle this matter without hearing, you may, subject to the provisions of 40 CFR § 22.18(a)(1), either (1) file an Answer to this Complaint and subsequently pay the full penalty requested within 60 days, or (2) within 30 days of your receipt of this Complaint file a written statement with the Regional Hearing Clerk at the address provided above agreeing to pay, and subsequently pay within 60 days of your receipt of this Complaint, the full penalty.

In either case, your payment shall be made by a cashier's or certified check, or by an electronic funds transfer (EFT). If you are paying by check, pay the check to "Environmental Protection Agency," noting on the check "OSTLF-311" and docket number "CWA-02-2011-3809". If you use the U.S. Postal Service, address the payment to "U.S. Environmental Protection Agency, Fines & Penalties, CFC, PO Box 979077, St Louis, MO 63197-9000

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
290 Broadway - 17th Floor  
New York, New York 10007.

Pursuant to 40 CFR §22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within 30 days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order in accordance with 40 CFR §22.18(a)(3). In accordance with 40 CFR §22.45(c)(3), no Final Order shall issue until at least ten (10) days after the close of the public comment on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 CFR §22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable regulations and requirements, and to maintain such compliance.

## **VII. Filing of Documents**

1. The Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
290 Broadway - 17th Floor  
New York, New York 10007

2. A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Tim Murphy, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, New York, New York 10007  
(212) 637-3236

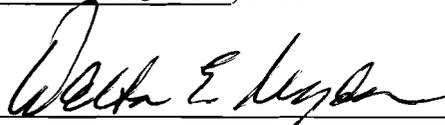
## **VIII. General Provisions**

1. Respondent has a right to be represented by an attorney at any stage of these proceedings.

2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act or regulations promulgated thereunder.

3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 311(b)(6) of the Act will affect Respondent's continuing obligation to comply with the Act, and with any regulations promulgated, or orders issued, pursuant thereto.

ISSUED THIS 15<sup>th</sup> DAY OF December, 2011.



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WALTER E. MUGDAN, Director  
Emergency and Remedial Response Division  
United States Environmental Protection Agency  
Region 2  
290 Broadway  
New York, New York 10007

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
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IN THE MATTER OF:

Montefiore Medical Center  
111 East 210th Street and  
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Respondent

Proceeding Pursuant to §311(b)(6) of the  
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Proceeding to Assess Class II Civil  
Penalty Under Section 311(b)(6) of  
the Clean Water Act

Docket No. CWA-02-2012-3801

**CERTIFICATE OF SERVICE**

I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "ADMINISTRATIVE COMPLAINT" and a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," (64 *Federal Register* 40176 *et seq.*, July 23, 1999) to the following person at the address listed below:

Spencer Foreman, MD  
President -CEO  
Montefiore Medical Center  
111 East 210<sup>th</sup> Street  
Bronx, New York 10467

I [hand carried / mailed] the original and a copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Date: JAN 10 2012  
New York, New York

  
[Signature of Sender]

**Attachment A**

**Montefiore Medical Center - Moses Division, Bronx, NY**

**Failure to Prepare an SPCC Plan in Accordance with 40 CFR §112.7 [40 CFR §112.3(a,b,c)]**

1. Plan is not prepared in accordance with good engineering practices. [40 CFR §112.7] The plan does not justify its claim of impracticability of secondary containment and corrosion protection for the facility's three USTs (this is violation of 40 CFR §112.7(d)), omits oil storage that existed at the facility at the time that the plan was prepared, and ignores the need for secondary containment for above-ground bulk oil storage (40 CFR §112.8(c)(2)). (These requirements and those identified below were not found in the plan.

Facility representatives stated that the three UST system tanks (totaling 63,000 gallons capacity), and their piping (from street to tanks and from tanks to the building) were installed without corrosion protection, and continued to be operated without corrosion protection, with one exception: the replacement of leaking steel piping, with fiberglass-reinforced plastic, in summer 2010 for the two 30,000-gallon UST systems, running from the tanks to the building.

2. Plan does not describe the type of oil in each container and its storage capacity [40 CFR §112.7(a)(3)(i)] Some oil storage is missing from the plan: two permanent waste-oil above-ground tanks, and two 55-gallon drums of oil, being temporarily used during a repair.
3. Plan does not describe discharge prevention measures, including procedures for routine handling of products. [40 CFR §112.7(a)(3)(ii)] The plan includes general procedures applicable to any tank at the facility, but does not describe procedures appropriate to specific tanks, such as covering specific storm drains during oil transfers, [40 CFR §112.7(c)] or deploying a boom around the delivery vehicle. [40 CFR §112.7(c)] The plan also states that measures, such as covering storm drains during fuel deliveries, are employed as a preventive measure, while the facility employs them only in the case of a spill.
4. Plan is not a carefully thought-out and prepared in accordance with good engineering practices. Plan does not provide appropriate written procedures for required inspections. [40 CFR §112.7] The plan includes inspection forms that are not applicable to the

facility: for example, the UST inspection form requires testing cathodic protection systems and observation wells, which do not exist at the facility.

5. Plan does not address lighting adequacy to discover discharges. [40 CFR §112.7(g)(5)] The plan does not address the inadequate lighting for the two waste-oil above-ground tanks.

**Failure to Prepare an SPCC Plan in Accordance with 40 CFR §112.8 [40 CFR §112.3(a,b,c)] (Onshore facilities, excluding production facilities).**

1. Plan does not indicate that mobile/portable storage tanks, including drums, have sufficient secondary containment and are located or positioned so as to prevent spilled oil from reaching navigable waters. [40 CFR §112.8(c)(11)] The plan does not mention two 55-gallon drums of oil that were observed in October 2010 in the fuel pump room.
2. Plan does not state that underground bulk storage containers have coatings or cathodic protection, and that leak test are conducted on a regular basis. *112.8(c)(4) Protect any completely buried metallic storage tank installed on or after January 10, 1974 from corrosion by coatings or cathodic protection compatible with local soil conditions. You must regularly leak test such completely buried metallic storage tanks.*
3. Plan does not state that all aboveground valves and pipelines are inspected on a regular basis to assess the general condition of items, such as valve glands and bodies, flange joints, expansion joints, catch pans, pipeline supports, locking of valves, and metal surfaces. [40 CFR §112.8(d)(4)] The plan states correctly that aboveground valves and pipelines are not at risk from vehicular traffic, but it does not address their inspection.
4. Plan does not state that integrity and leak testing of buried piping is conducted at the time of installation, modification, construction, relocation, or replacement. [40 CFR §112.8(d)(4)] The plan does not address this requirement.

**Failure to prepare an SPCC Plan in Accordance with the EPA Audit Policy and Disclosure Report**

The plan is dated Jan. 27, 2007. However, Montefiore Medical Center's 2004 Audit Policy disclosure report identified the lack of an SPCC Plan as a violation that would be corrected during 2004. Upon inquiry, Messrs. Ammirato and Smythe stated that they know of no plan previous to 2007. Note that this is not a violation of 40 CFR §112.



**Attachment B**

**Montefiore Medical Center - Moses Division, Bronx, NY**

**Failure to Implement the SPCC Plan in accordance with 40 CFR §112.7 [40 CFR §112.3(a,b,c)]**

1. Inspections and tests have not been recorded in accordance with written procedures, signed by the appropriate supervisor, and maintained with the SPCC Plan for a period of three years. [40 CFR §112.7(e)] The inspection forms for above-ground and underground storage tanks are attached to the plan as Appendix C. Facility representatives stated that the forms are not used.
  
2. Spill prevention briefings for oil-handling personnel have not been conducted at least once a year. [40 CFR §112.7(f)(3)] Facility representatives stated that no training on the plan has ever been conducted. Facility representatives who are responsible for the oil storage tanks stated that they were unaware of the existence of the plan until the facility's contractor notified the facility in 2010 that the plan should be updated.
  
3. Lighting is inadequate to discover discharges. [40 CFR §112.7(g)(5)] Lighting is inadequate for the facility's two waste-oil above-ground tanks.

**Failure to Implement an SPCC Plan in Accordance with 40 CFR §112.8 [40 CFR §112.3(a,b,c)] (Onshore facilities, excluding production facilities).**

1. Bulk storage container installations are not provided with a secondary means of containment for the entire capacity of the largest single container plus sufficient freeboard to contain precipitation. [40 CFR §112.8(c)(2)] During the October 2010 inspection, it was observed that two 275-gallon, single-wall steel "belly" tanks, a 275-gallon used-oil tank and two 55-gallon drums of oil lacked secondary containment.

Over paved surfaces for varying distances to drains for the municipal combined sewer system.

**ADDITIONAL VIOLATIONS:**

- The EPA representative observed that the three UST systems at the facility were equipped with spill buckets that contained sediment and fluids. The spill bucket for 30,000-gallon UST System #2, however, was sufficiently filled with sediment and fluid that it could hold insufficient fuel from a spill.
- Facility representatives stated that the tanks for the two 30,000-gallon UST systems have no release detection.
- Facility representatives stated that the piping for the two 30,000-gallon UST systems has no release detection.

## **Failure to Implement SPCC Plan Amendments Following Changes at the Facility**

### **[40 CFR §112.5(a)]**

Plan amendments must be implemented within 6 months of changes to the facility. The plan includes a number of corrective measures to be implemented for the three USTs at the facility: install/repair high-level alarm, leak detection and/or overfill protection by August 2007, but documentation of implementation is not included with the plan. Facility representatives stated that an overfill alarm was installed for only two of the three USTs in August 2010.

The plan identifies the former Director of Safety (Mr. Edward Fominyam) as the emergency contact. Since he stopped working at the facility in November 2009 (per Messrs. Ammirato and Smythe), the plan should have been updated by May 2010.

### **Facility Oil Storage Capacity:**

Total Above-Ground Storage:	41,750+ gallons*
Total Below-Ground Storage:	<u>63,000 gallons</u>
Total Storage Capacity:	104,750 gallons

\* Outside the vault for Tank #2 on the state PBS form (#4 in the SPCC Plan), but in the same room as PBS Tank #2, the EPA representative observed a tank below-grade, which is not included in the SPCC Plan. Messrs. Ammirato and Smythe stated that it stores waste oil from the second cogenerator's turbine, which would shut down if the tank volume hit the high-level alarm. They did not know its volume and stated that it is in a concrete vault that has never been inspected.

### **Flow Path:**

Over paved surfaces for varying distances to drains for the municipal combined sewer system.

**ADDITIONAL VIOLATIONS:**

- The EPA representative observed that the three UST systems at the facility were equipped with spill buckets that contained sediment and fluids. The spill bucket for 30,000-gallon UST System #2, however, was sufficiently filled with sediment and fluid that it could hold insufficient fuel from a spill.
- Facility representatives stated that the tanks for the two 30,000-gallon UST systems have no release detection.
- Facility representatives stated that the piping for the two 30,000-gallon UST systems has no release detection.

**Attachment C**

**Montefiore Medical Center - Moses Division, Bronx, NY**

**Failure to Amend the SPCC Plan Following Changes at the Facility [40 CFR §112.5(a)]**

1. Plan has not been amended following changes which materially affect the facility's potential to discharge oil. Plan has not been amended within 6 months of changes to the facility. [40 CFR §112.5(a)]