



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

5 Post Office Square, Suite 100
Boston, MA 02109-3912

RECEIVED
15 STM
2010 JUL 16 A 2:12

July 15, 2010

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 1
5 Post Office Square, Suite 100 (ORA18-1)
Boston, MA 02109-3912

BY HAND

EPWA ORG
OFFICE OF
REGIONAL HEARING CLERK

Re: In the Matter of Ryezak Oil Co.
Docket No. CWA-01-2010-0012

Dear Ms. Rivera:

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,

David Peterson
Senior Enforcement Counsel

Enclosure

cc: Robert Comeau,
Ryezak Oil Co.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED
15 2TM
2010 JUL 15 A 2:11
OFFICE OF
HEARING CLERK

_____)	
IN THE MATTER OF:)	ADMINISTRATIVE COMPLAINT AND
)	NOTICE OF OPPORTUNITY TO REQUEST A
)	HEARING
)	
RYEZAK OIL CO.)	
1536 Route 25)	Proceeding to Assess Class II Civil Penalty Under
Rumney, New Hampshire 03266,)	Clean Water Act Sections 308 and 311 for
)	Reporting and SPCC Violations
)	
)	
Respondent.)	Docket No. CWA 01-2010-0012
_____)	

I. STATUTORY AUTHORITY

1. This Administrative Complaint is issued under the authority vested in the U.S. Environmental Protection Agency ("EPA") by sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §§ 1319(g) and 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and 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" is the Director of the Office of Environmental Stewardship, EPA, Region 1.

2. Pursuant to sections 309(g) and 311(b)(6)(B)(ii) of the Act, and in accordance with Part 22, Complainant hereby provides notice of its proposal to assess a civil penalty against Ryezak Oil Co. ("Ryezak" or "Respondent") for (1) the failure to respond to a request for information by EPA, in violation of Section 308 of the Act, 33 U.S.C. § 1318, and (2) the 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) of the Act, 33 U.S.C. § 1321(j), and other provisions of the Act, 33 U.S.C. §§ 1251 *et seq.* 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, delegated to EPA, 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, at 40 C.F.R. part 112, 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(a), the owner or operator of a regulated onshore facility must prepare a SPCC Plan in writing and in accordance with 40 C.F.R. § 112.7, and any other applicable sections of part 112. If the facility became operational prior to August 16, 2002, the owner or operator must maintain its Spill Prevention Control and Countermeasure ("SPCC") plan.

II. GENERAL ALLEGATIONS

6. Respondent is a company with its headquarters located at 1536 Route 25, Rumney, New Hampshire, 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.

7. 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 bulk oil storage and distribution facility located at 1536 Route 25, Rumney, New Hampshire (the “Facility”).

8. Respondent has owned and operated the Facility since 1990.

9. Respondent stores “oil” or oil products at the Facility within the meaning of section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2.

10. 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.

11. The Facility is a “non-transportation-related” facility within the meaning of Appendix A of 40 C.F.R. § 112.2.

12. The Facility is located approximately 200 feet from a storm drain that empties into the Baker River, which flows into the Pemigewasset River, which flows into the Merrimac River and ultimately the Atlantic Ocean. Due to the location of the Facility with respect to the storm drain that empties into the Baker River and the topography of the area, the Facility could reasonably be expected to discharge oil into the Baker River and the downstream bodies of water.

13. The Baker River, the Pemigewasset River, the Merrimac River and the Atlantic Ocean are “navigable waters” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7) and

40 C.F.R. § 110.1, and are, therefore, subject to the jurisdiction of section 311 of the Act, 33 U.S.C. § 1321.

14. As of at least March 19, 2009, the Facility had one 25,000 gallon above ground No. 2 oil storage container, one 15,000 gallon above ground unleaded fuel storage container, one 15,000 gallon above ground kerosene storage container and one 15,000 gallon above ground diesel storage container. Therefore, as of at least that date, the Facility had an aggregate above ground storage capacity of approximately 70,000 gallons, subjecting it to the requirements of the Oil Pollution Prevention regulations at 40 C.F.R. Part 112.

15. Based on a July 25, 2000 Spill Prevention Control and Countermeasure (“SPCC”) plan prepared for the Facility, the Facility had an aggregate above ground storage capacity subjecting it to the requirements of the Oil Pollution Prevention regulations, at 40 C.F.R. Part 112, since at least July 25, 2000.

16. Based on the allegations in the above paragraphs, Respondent is the owner and operator of a non-transportation-related facility engaged in storing, distributing, 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.

17. On March 19, 2009, a representative of EPA conducted a SPCC inspection of the Facility. Based on the information provided at that time, the inspector determined that the Facility had a SPCC Plan, dated July 25, 2000, which was outdated and failed to reflect the current conditions at the Facility.

18. Additionally, the EPA inspector found that the SPCC Plan had not been fully implemented, including, but not limited to, the presence of insufficiently impermeable secondary containment and no secondary containment for the loading/unloading area.

19. Pursuant to sections 308(a) and 311(m) of the Act, 33 U.S.C. §§ 1318(a) and 1321(m), on June 5, 2009, EPA issued an information request to the Respondent (the "308 Letter"), noting that during the March 19, 2009 inspection EPA notified the Facility its SPCC Plan, dated July 25, 2000, was inadequate due to the fact it was outdated and did not reflect the current condition of the Facility. In addition the SPCC Plan had not been fully implemented and did not include a schedule for full implementation.

20. EPA's 308 Letter required that Respondent submit to EPA within thirty (30) calendar days of receipt of the 308 Letter: 1) a statement detailing the actions taken by the Facility to correct the deficiencies specified in EPA's inspection report; 2) either a new or revised SPCC Plan or, if not feasible to complete the SPCC Plan within the 30 day period, a detailed schedule of when it would be completed and fully implemented; and 3) additional information concerning the tanks being used by the Facility, the date the facility first exceeded SPCC regulatory thresholds, the date the Facility began operations or the date the Respondent took over ownership, additional facilities owned by Respondent, costs incurred in preparing and implementing the new/revised SPCC Plan.

21. EPA's 308 Letter was sent certified mail and received and signed for by Respondent's representative on June 9, 2009. Therefore, a response to the 308 Letter was due to EPA no later than July 9, 2009.

22. An EPA representative telephoned the Facility owner several times regarding the 308 Letter and, on September 23, 2009, EPA sent a copy of the June 5, 2009 308 Letter to the Complainant by certified mail. The Respondent received and signed for this letter on September 25, 2009. As of this date, the Respondent has not submitted a response to the 308 Letter, nor has its owner returned phone messages EPA left with the company.

III. VIOLATIONS

Count I: Failure to Respond to a Request for Information under Section 308 of the CWA

23. Paragraphs 1 through 22 are incorporated by reference as if fully set forth herein.

24. The Respondent failed to respond to or otherwise provide the information requested by the 308 Letter within thirty (30) days of receipt, in violation of sections 308 and 311(m) of the Act, 33 U.S.C. §§ 1318 and 1321(m), or any time thereafter.

25. By failing to respond to the 308 Letter, Respondent violated sections 308 and 311(m) of the Act, 33 U.S.C. §§ 1318 and 1321(m), at least through the date of this Complaint.

26. Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), authorizes EPA to assess administrative penalties for violations of section 308 of the Act, 33 U.S.C. § 1318.

27. Pursuant to section 309(g)(2)(B) of the Act and 40 C.F.R. § 19.4, Respondent is liable for civil penalties up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

Count II: Failure to Maintain and Implement an SPCC Plan in Violation of 40 C.F.R. § 112.3(a)

28. Paragraphs 1 through 27 are incorporated by reference as if fully set forth herein.

29. Forty C.F.R. § 112.3 requires that the owner or operator of an SPCC regulated

facility prepare a written SPCC plan in accordance with 40 C.F.R. § 112.7 and other requirements of 40 C.F.R. Part 112, including, but not limited to, the requirement to have the plan periodically reviewed and updated in 40 C.F.R. § 112.5(b), the requirement to have the SPCC plan available on-site for EPA review in 40 C.F.R. § 112.3(e), and the additional requirements for onshore facilities in 40 C.F.R. § 112.8.

30. Under the original Oil Pollution Prevention regulations, effective on January 10, 1974, SPCC regulated facilities were required to prepare a plan within six months of beginning operations and to have the plan implemented within a year of beginning operations.

31. Pursuant to an August 16, 2002 amendment of the Oil Pollution Prevention regulations, 40 C.F.R. 112.3(a)(1), requires the owner or operator of a SPCC regulated facility that was in operation on or before that date to maintain its SPCC plan.¹

32. Respondent prepared an SPCC plan dated July 25, 2000 but failed to fully implement the plan, particularly regarding adequate secondary containment, as required by 40 C.F.R. § 112.7 and 112.8.

33. Respondent failed to periodically update and review the SPCC plan as required by 40 C.F.R. § 112.5(b).

34. Respondent failed to maintain a copy of the SPCC plan at the Facility and failed to provide the EPA Regional Administrator² with a copy of the SPCC plan for on-site review as

¹ The preamble to the amended SPCC regulations for 40 C.F.R. § 112.3(a) states that "The owner or operator of a facility in operation on the effective date of this rule [i.e., August 16, 2002] who is required to have prepared or implemented an SPCC Plan, but has not, remains subject to civil penalties for a violation of current § 112.3 if the time has expired for preparation or implementation of his Plan." 67 FR 47042, 47083 (July 17, 2002).

² In EPA Region 1, this authority is delegated from the Regional Administrator to the On-Scene Coordinator (Delegation No. 2-13).

required by 40 C.F.R. § 112.3(e).

35. The Facility lacked sufficiently impervious secondary containment for aboveground bulk storage such that discharged oil would be contained within the Facility's bermed area, as required by 40 C.F.R. §§ 112.7(c) and 112.8(c)(2).

36. Based on the March 19, 2009 inspection, EPA determined that the Respondent had failed to adequately provide for measures which would prevent the discharge of oil from reaching waters of the United States and to implement specific requirements listed in 40 C.F.R. §§ 112.7 and 112.8.

37. Respondent's failure to maintain the SPCC plan for its Facility, including its failure to fully implement the SPCC plan, in accordance with the requirements of 40 C.F.R. §§ 112.3, 112.5, 112.7 and 112.8, as described above, violated 40 C.F.R. § 112.3(a), and section 311(j) of the Act, 33 U.S.C. § 1321(j). Respondent has violated at least one of these requirements for each day for at least the past five years, for a total of 1,826 days of violation.³

38. Pursuant to section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(j), and 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$11,000 per day for each day during which the violation continues, up to a maximum of \$157,500 for the period of March 15, 2004 through January 12, 2009 and \$16,000 per day up to a maximum of \$177,500 after January 12, 2009.

³EPA is not 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.

IV. PROPOSED PENALTY

39. Based on the forgoing Findings of Violation, and pursuant to the authority of sections 309(g) and 311(b)(6)(B)(ii) of the Act, 33 U.S.C. §§ 1319(g) and 1321(b)(6)(B)(ii), and 40 C.F.R. § 19.4, and sections 309(g)(3) and 311(b)(8) of the Act, 33 U.S.C. §§ 1319(g)(3) and 1321(b)(8), the Complainant proposes that a Final Order assessing administrative penalties be issued against Respondent in an amount not to exceed \$16,000 per day for each day Respondent violated Section 308 of the Act by not responding to EPA's 308 Letter, up to a maximum of \$177,500, and starting five years prior to filing of this Complaint, \$16,000 per day for each day Respondent violated Section 311 of the Act up to a maximum of \$177,500. In accordance with section 309(g)(3), for the violation of section 308 of the Act, the Complainant proposes that the penalty be assessed after taking into account the nature, circumstances, extent and gravity of the violation, the violator's ability to pay, prior history of violations, degree of culpability, economic benefit resulting from the violation and any other matters as justice may require. In accordance with 311(b)(8) of the Act, for the violation of section 311(j), the Complainant proposes that the penalty be assessed after taking into account 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 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 matters as justice may require.

40. Respondent's violation of the information gathering provisions of section 308 of

the Act alleged above represents a significant violation because, unless requested information is provided by the regulated community, the Agency cannot operate an effective oil pollution prevention program.

41. Respondent's violation of the Oil Pollution Prevention regulations alleged above represent significant violations of the Act because failure to fully maintain and implement an adequate SPCC plan leaves a facility unprepared to deal with an oil spill or to prevent the spill from having potentially serious environmental consequences.

V. OPPORTUNITY TO REQUEST HEARING

42. Respondent may, pursuant to section 311(b)(6) of the Act and 40 C.F.R. § 22.15(c), request a hearing on the proposed penalty assessment in its Answer to this Complaint. The procedures for any such hearing and for all proceedings in this action are set out in 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint.

43. Default constitutes an admission of all facts alleged in this Complaint and a waiver of the right to a hearing on such factual allegations. In order to avoid default in this matter, Respondent must within 30 days after receipt of this Complaint either: (1) settle this matter with the Complainant; or (2) file both an original and one copy of a written Answer to this Complaint to:

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency-Region 1
5 Post Office Square, Suite 100 (ORA18-1)
Boston, Massachusetts 02109-3912

44. Respondent is also required to provide a contemporaneous copy of any Answer to Complainant's counsel, who is authorized to receive service on behalf of EPA pursuant to

40 C.F.R. § 22.5(c)(4), at the following address:

David Peterson, Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency – Region 1
5 Post Office Square, Suite 100 (OES04-4)
Boston, Massachusetts 02109-3912

45. Pursuant to 40 C.F.R. § 22.15, the Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has knowledge. If the Answer asserts no knowledge of a particular factual allegation, the allegation shall be deemed denied. Otherwise, the failures to admit, deny, or explain any material factual allegation contained in this Complaint constitutes an admission of the allegation. The Answer shall also state the circumstances or arguments for any defense Respondent wishes to assert, challenges to any factual allegation in the Complaint, and any basis Respondent may have to oppose the Complainant's proposed penalty.

46. Following receipt of the Answer, a Presiding Officer will be assigned. The 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

47. 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.

Date: 09/15/10

Susan Studien

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

In the Matter of Ryzak Oil Co.
Docket No. CWA-01-2010-0012

CERTIFICATE OF SERVICE

I certify that the foregoing ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING was sent 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 1
5 Post Office Square
Boston, MA 02109-3912

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

Robert Comeau, Owner
Ryzak Oil Co.
1536 Route 25
Rumney, NH 03266

Copy by certified mail, return
receipt requested:

Robert Daniel
New Hampshire Department of
Environmental Protection
P.O. Box 95, 29 Hazen Drive
Concord, NH 03302-0095

Dated: 7/19/2010



David Peterson
Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (OES04-4)
Boston, MA 02109-3912
Tel: (617) 918-1891
Fax: (617) 918-0891
Email : peterson.david@epa.gov