



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

JUN - 7 2011

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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 Knight Oil, Inc.
Docket No.

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,

Tonia Bandrowicz
Senior Enforcement Counsel

Enclosure

cc: Carl A. LeSage, Treasurer
Knight Oil, Inc.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

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IN THE MATTER OF:

ADMINISTRATIVE COMPLAINT AND
NOTICE OF OPPORTUNITY TO REQUEST A
HEARING

KNIGHT OIL, INC.

Proceeding to Assess Class II Civil Penalty Under
Clean Water Act Section 311

126 Rabbit Road
Salisbury, Massachusetts

Respondent.

Docket No. CWA-01-2011-0040

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 ("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 Knight Oil, Inc. ("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) of the Act, 33 U.S.C. § 1321(j). 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, through delegation 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 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. “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.

7. Under Sections 311(b)(6)(B)(ii) of the Act, as updated by 40 C.F.R. § 19.4, and Section 311(b)(8) of the Act, penalties may be issued in an amount not to exceed \$11,000 per

day for each day during which violations continued, up to a maximum of \$157,500, for violations occurring between March 15, 2004 and January 12, 2009, and \$16,000 per day for each day during which violations continued, up to a maximum of \$177,500, for violations occurring after January 12, 2009, 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.

II. GENERAL ALLEGATIONS

8. Respondent is a corporation organized under the laws of Massachusetts with its headquarters located in Salisbury, Massachusetts, 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.

9. 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 two facilities that store and distribute petroleum products located at 49 Congress Street in Amesbury, Massachusetts (the “49 Congress Street Facility”) and 91 Congress Street in Amesbury, Massachusetts (the “91 Congress Street Facility”) (collectively, the “Facilities”).

10. The Facilities are normally attended facilities.

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

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

13. The Facilities are each 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 Facilities are each 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. Due to the topography of the area, and the location of the Facilities with respect to an unnamed stream, each of the facilities could reasonably be expected to discharge oil into the unnamed stream and downstream bodies of water.

16. The unnamed stream flows into the Back River which flows into Clarks Pond which flows into the Powwow River which flows into the Merrimack River which empties into the Atlantic Ocean. The unnamed stream, the Back River, Clarks Pond, the Powwow River, the Merrimack River, and the Atlantic Ocean are all “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 non-transportation-related facilities engaged in storing, using, and distributing 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 Prepare, Maintain, and Implement an SPCC Plan at the 49 Congress Street Facility

18. Paragraphs 1-17 are incorporated by reference as if fully set forth herein.

19. On March 9, 2011, an authorized EPA representative inspected the 49 Congress Street Facility for compliance with Section 311(j) of the Act, in particular, the requirements of the Oil Pollution Prevention regulations.

20. 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 prepared, maintained, and implemented an SPCC plan that is in accordance with the requirements of 40 C.F.R. § 112.7.

21. Respondent has owned and operated the 49 Congress Street Facility since 1975.

22. EPA determined that the 49 Congress Street Facility was in noncompliance with the Oil Pollution Prevention regulations at 40 C.F.R. Part 112 because Respondent had failed to prepare an SPCC plan in accordance with 40 C.F.R. § 112.3 for the facility, 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 prepare and implement an SPCC plan at the 49 Congress Street Facility, includes, but is not limited to the following deficiencies:

- a. Failure to have an SPCC plan prepared for the facility, and reviewed and certified by a Professional Engineer;

- b. Lack of a containment system at its loading rack that could hold at least the maximum capacity of any single compartment of tank truck loaded or unloaded at the facility; and
- c. Failure to keep written procedures and a record of tank inspections, leak testing of valves and piping associated with each bulk storage container and integrity testing, signed by the appropriate supervisor or inspector

23. Respondent's failure to prepare, maintain and implement an SPCC plan for the facility in accordance with the requirements of 40 C.F.R. §§ 112.3, 112.7 and 112.8, violated 40 C.F.R. § 112.3 and Section 311 of the CWA, 33 U.S.C. § 1321. Respondent violated these requirements for each day for the period of violation, which was for a total of at least 1,826 days.¹

Count II: Failure to Prepare, Maintain, and Implement an SPCC Plan at the 91 Congress Street Facility

24. Paragraphs 1- 23 are incorporated by reference as if fully set forth herein.

25. On March 9, 2011, an authorized EPA representative inspected the 91 Congress Street Facility for compliance with Section 311(j) of the Act, in particular, the requirements of the Oil Pollution Prevention regulations.

26. 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 prepared, maintained, and implemented an SPCC

¹ EPA 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. Five years equals 1,826 days of violation.

plan that is in accordance with the requirements of 40 C.F.R. § 112.7.

27. Respondent has owned and operated the 91 Congress Street Facility since at least 1975.

28. EPA determined that the 91 Congress Street Facility was in noncompliance with the Oil Pollution Prevention regulations at 40 C.F.R. Part 112 because Respondent had failed to prepare an SPCC plan in accordance with 40 C.F.R. § 112.3 for the facility, 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 prepare and implement an SPCC plan at the 91 Congress Street Facility, includes, but is not limited to the following deficiencies:

- a. Failure to have an SPCC plan prepared for the facility, and reviewed and certified by a Professional Engineer;
- a. Lack of appropriate secondary containment for its aboveground bulk oil storage tanks to prevent a discharge of oil;
- b. Lack of a containment system at its loading rack that could hold at least the maximum capacity of any single compartment of tank truck loaded or unloaded at the facility; and
- c. Failure to keep written procedures and a record of tank inspections, leak testing of valves and piping associated with each bulk storage container and integrity testing, signed by the appropriate supervisor or inspector, as required by the Oil

Pollution Prevention regulations.

29. Respondent's failure to prepare, maintain, and implement an SPCC plan for the facility in accordance with the requirements of 40 C.F.R. §§ 112.3, 112.7 and 112.8 violated 40 C.F.R. § 112.3 and Section 311 of the CWA, 33 U.S.C. § 1321. Respondent violated these requirements for each day for the period of violation, which was for a total of at least 1,826 days.²

IV. PROPOSED PENALTY

30. Based on the foregoing Findings of Violation, and pursuant to the authority of Section 311(b)(6)(B)(ii) of the Act, as updated by 40 C.F.R. § 19.4, and Section 311(b)(8) of the Act, the Complainant proposes that a Final Order assessing administrative penalties be issued against Respondent in an amount not to exceed \$11,000 per day for each day during which its violations continued, up to a maximum of \$157,500, for violations occurring between March 15, 2004 and January 12, 2009, and \$16,000 per day for each day during which violations continued, up to a maximum of \$177,500, for violations occurring after January 12, 2009, 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.

² EPA 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. Five years equals 1,826 days of violation.

31. Respondent's violations of the Oil Pollution Prevention regulations alleged above represent significant violations of the Act because failure to prepare 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

32. 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. Even if Respondent does not explicitly request a hearing in its Answer, the Presiding Officer may hold such a hearing if the Answer raises issues appropriate for adjudication. 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.

33. 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
Mail Code: ORA18-1
Boston, MA 02109-3912

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:

Tonia Bandrowicz, Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency – Region 1
5 Post Office Square, Suite 100
Mail Code: OES04-4
Boston, MA 02109-3912

34. 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 failure 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.

35. 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

36. 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

37. You may request an informal conference with Complainant's attorney, Tonia Bandrowicz, 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.

38. If you have any questions concerning the enclosed Consent Agreement or the settlement process, or wish to arrange for an informal conference, please contact Ms. Bandrowicz at (617) 918-1734.

Date: 06/03/11

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