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April 30, 2013

VIA HAND DELIVERY

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

RECEIVED
APR 30 2013
EPA ORC *WS*
Office of Regional Hearing Clerk

Re: In the Matter of Harbor Fuel Oil Corporation, No. CWA-01-2012-0081

Dear Ms. Santiago:

Enclosed for filing in the above-referenced matter please find an original and copy of Harbor Fuel Oil Corporation's Answer to Administrative Complaint and Request for Hearing.

Thank you for your assistance in this matter.

Sincerely yours,

Emily E. Renshaw

Enclosure

cc: Mark E. Robinson, Esq. (*via e-mail*)
William J. Squires, III, Esq. (*via e-mail*)
Tonia Bandrowicz, Esq. (*via hand delivery*)

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

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IN THE MATTER OF:)
) Docket No. CWA-01-2012-0081
Harbor Fuel Oil Corporation)
10 Airport Road) **ANSWER TO ADMINISTRATIVE**
Nantucket, MA 02554) **COMPLAINT AND REQUEST FOR**
) **HEARING**
)
Respondent.)
_____)

Respondent Harbor Fuel Oil Corporation (“Harbor Fuel”), pursuant to Section 311(b)(6) of the Clean Water Act (“CWA”) and 40 C.F.R. § 22.15, hereby requests an informal conference and hearing, and answers the Administrative Complaint and Notice of Opportunity to Request a Hearing (“Complaint”) issued by the Director, Office of Environmental Stewardship, Region 1, United States Environmental Protection Agency (the “EPA”) as follows:

I. STATUTORY AUTHORITY

1. This paragraph states a legal conclusion to which no response is required.
2. This paragraph states a legal conclusion to which no response is required. To the extent a response may be required, it is denied that Harbor Fuel failed to comply with the Oil Pollution Prevention regulations or provisions of the Clean Water Act enumerated in this paragraph. It is further denied that any civil penalties are warranted or should be assessed against Harbor Fuel.
3. This paragraph states a legal conclusion to which no response is required.
4. This paragraph states a legal conclusion to which no response is required.
5. This paragraph states a legal conclusion to which no response is required.
6. This paragraph states a legal conclusion to which no response is required.

II. GENERAL ALLEGATIONS

7. Admitted.

8. Admitted that Harbor Fuel operates an oil storage and distribution facility located at the southwest corner of Salem Street and New Whale Street in Nantucket, Massachusetts (“Nantucket Facility”). The remainder of this paragraph states a legal conclusion to which no response is required.

9. Admitted.

10. Admitted that Harbor Fuel stores, distributes [and consumes] oil at the Nantucket Facility. The remainder of this paragraph states a legal conclusion to which no response is required.

11. This paragraph states a legal conclusion to which no response is required.

12. This paragraph states a legal conclusion to which no response is required.

13. Admitted that the Nantucket Facility is located adjacent to Nantucket Harbor, which is connected to the Nantucket Sound in the Atlantic Ocean. The remainder of this paragraph states a legal conclusion to which no response is required.

14. Harbor Fuel is without knowledge or information sufficient to form a belief as to the allegations in this paragraph.

15. Admitted that Harbor Fuel is subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112. The remainder of this paragraph states legal conclusions to which no response is required.

16. This paragraph states a legal conclusion to which no response is required.

17. Admitted that Harbor Fuel is subject to relevant FRP requirements at 40 C.F.R. Part 112.20 and 112.21. To the extent that this paragraph calls for a legal conclusion, it requires

no response. To the extent that response is required, Harbor Fuel is without knowledge or information sufficient to form a belief as to the allegations in this paragraph.

18. This paragraph states a legal conclusion to which no response is required.

19. Admitted that Harbor Fuel has a Facility Response Plan for its Nantucket Facility (the “FRP”) that was approved by the EPA on September 29, 2011. Harbor Fuel is without knowledge or information sufficient to form a belief as to whether the EPA Region 1 Office has that FRP on file.

III. FINDINGS OF VIOLATION

20. The responses in paragraphs 1-19 are incorporated by reference as though fully set forth herein.

21. This paragraph states a legal conclusion to which no response is required.

22. Admitted that Harbor Fuel’s FRP states that the program was developed in accordance with, *inter alia*, the National Preparedness for Emergency Response Exercise Program guidance documents. The remainder of this paragraph states a legal conclusion to which no response is required.

23. Admitted that on March 20, 2012, representatives of the EPA, the Massachusetts Department of Environmental Protection, and the U.S. Coast Guard conducted a Facility Response Plan Government-Initiated Unannounced Exercise at Harbor Fuel’s Nantucket Facility. Further admitted that the EPA alleged that Harbor Fuel did not successfully satisfy all of the objectives of the Government-Initiated Unannounced Exercise (“GIUE”). Harbor Fuel is without knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

24. Admitted that the EPA has alleged that Harbor Fuel did not successfully satisfy all of the objectives of the GIUE. Harbor Fuel is without knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

25. Admitted that EPA informed Harbor Fuel on the date of inspection and by letter dated May 1, 2012 that Harbor Fuel had allegedly failed to successfully satisfy all of the objectives of the GIUE. As to the details of such communications, the May 1, 2012 letter speaks for itself and Harbor Fuel is without knowledge or information sufficient to form a belief as to the specific nature of statements made during the GIUE inspection.

26. Admitted that the EPA issued a Request for Information (the "Request") to Harbor Fuel dated July 19, 2012. The Request speaks for itself so no further response is required.

27. Admitted that Harbor Fuel responded to the Request in a submission dated August 10, 2012. The response from Harbor Fuel speaks for itself so no further response is required. Harbor Fuel is without knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

28. Denied that Harbor Fuel has not provided adequate responses to the EPA's requests for information. Harbor Fuel is without knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

29. Denied that Harbor Fuel has failed to develop and implement an adequate facility response training program and a facility response drill/exercise program. The remainder of this paragraph states a legal conclusion to which no response is required. To the extent a response is required, Harbor Fuel denies that it has violated 40 C.F.R. § 112.21(a).

30. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, Harbor Fuel denies that it has violated 40 C.F.R. § 112.21(a).

31. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, Harbor Fuel denies that it is liable for civil penalties.

IV. PROPOSED PENALTY FOR CLEAN WATER ACT VIOLATIONS

32. This paragraph states legal conclusions to which no responses are required. To the extent a response is required, Harbor Fuel denies that the assessment of administrative penalties against Harbor Fuel is proper or warranted.

33. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

V. OPPORTUNITY TO REQUEST HEARING

34. Respondent hereby requests a hearing pursuant to Section 311(b)(6) of the CWA and 40 C.F.R. § 22.15(c).

35. This paragraph states a legal conclusion to which no response is required.

36. This paragraph states a legal conclusion to which no response is required.

37. This paragraph states a legal conclusion to which no response is required.

VI. PUBLIC NOTICE

38. This paragraph states a legal conclusion to which no response is required.

39. Harbor Fuel has requested an informal conference concerning the issues raised herein.

40. This paragraph states a legal conclusion to which no response is required.

AFFIRMATIVE DEFENSES

As separate and distinct additional defenses to the Complaint, Harbor Fuel alleges as follows:

1. The Complaint and each claim therein fail to allege facts sufficient to state a claim upon which relief can be granted.
2. EPA has failed to calculate the proposed penalty in accordance with the pertinent statutory and regulatory authority.

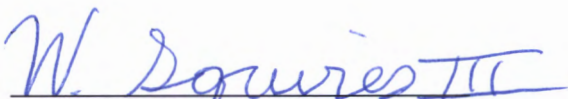
REQUEST FOR HEARING

Pursuant to the provisions of Section 311(b)(6) of the CWA and 40 C.F.R. § 22.15(c), Harbor Fuel hereby requests a hearing upon the issues raised herein, said hearing to be scheduled in accordance with the provisions of 40 C.F.R. § 22.21.

Respectfully submitted,

HARBOR FUEL OIL CORPORATION

By its attorneys,



Mark E. Robinson

William J. Squires, III

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E-mail: mark.robinson@bingham.com

E-mail: william.squires@bingham.com

Dated: April 30, 2013

CERTIFICATE OF SERVICE

I certify that the foregoing ANSWER TO ADMINISTRATIVE COMPLAINT AND REQUEST FOR HEARING was served on the following persons, in the manner specified, on the date below:

Original and one copy
hand delivered to: Wanda Santiago
Regional Hearing Clerk
U.S. EPA-Region 1
5 Post Office Square, Suite 100
Mail Code: ORA18-1
Boston, MA 02109-3912

Copy hand delivered to: Tonia Bandrowicz
Senior Enforcement Counsel
U.S. EPA-Region I
5 Post Office Square, Suite 100
Mail Code: OES04-3
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Dated: April 30, 2013