

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN THE MATTER OF:

**H.C. McCOMAS FUEL CO.,
2301 Evergreen Street
Baltimore, MD 21216,**

Respondent.

**ADMINISTRATIVE COMPLAINT AND
OPPORTUNITY TO REQUEST A HEARING**

**Proceeding to Assess a Class I
Civil Penalty Under Section
311 of the Clean Water Act, as amended,
for a Violations of the SPCC Regulations**

Docket No. CWA-03-2007-0098

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I. STATUTORY AUTHORITY

1. This Administrative Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(i) of the Clean Water Act, as amended, ("CWA"), 33 U.S.C. §1321(b)(6)(B)(i). The Administrator has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has delegated it to the Director of the Region's Hazardous Site Cleanup Division ("Complainant").

2. Pursuant to Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. §1321(b)(6)(B)(i), 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," codified at 40 C.F.R. Part 22, ("Part 22" or "Consolidated Rules of Practice"), Complainant hereby provides notice of his proposal that the Regional Administrator or his designee assess a civil penalty against the H. C. McComas Fuel Company ("McComas" or "Respondent") for its failure to comply with regulations issued under Section 311(j) of the CWA, 33 U.S.C. § 1321(j).

3. Section 311(j)(1)(C) of the CWA, 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"

4. 40 C.F.R. Part 112 ("Oil Pollution Prevention" regulations), which implements Section 311(j) of the CWA, 33 U.S.C. § 1321(j), sets forth procedures, methods and equipment and other requirements to prevent the discharge of oil from non-transportation-related facilities into or upon the navigable waters of the United States and adjoining shorelines in such quantities that by regulation have

been determined may be harmful to the public health or welfare or environment of the United States by owners or operators who are engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products. The Oil Pollution Prevention regulations apply to non-transportation-related facilities with: (1) an underground storage capacity greater than 42,000 gallons of oil, or, (2) an above-ground aggregate storage capacity of greater than 1,320 gallons of oil.

II. THE RESPONDENT

5. The Respondent is a Maryland corporation with a principal place of business located at 2301 Evergreen Street, Baltimore, Maryland 21216. The Respondent is engaged in the retail sale of fuel oil.

6. The Respondent operates an oil storage facility known at 2301 Evergreen Street which has an approximate above-ground storage capacity of 120,000 gallons (the "Facility").

III. GENERAL ALLEGATIONS

7. The Respondent is a person within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. §1321(a)(7), and 40 C.F.R. §112.2.

8. The Respondent is engaged in producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products at the Facility.

9. EPA personnel inspected the Respondent's Facility on October 18, 2006.

10. The Facility utilizes a loading rack to load its tank trucks for the delivery of fuel oil to residential and commercial buildings. The area surrounding the loading rack drains to two oil-water separators with a combined volume of 1,500 gallons.

11. Upon information and belief, the Facility has been operating for over thirty years.

12. The Facility is an "onshore facility" within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2 which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States (as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1) or its adjoining shoreline 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.

13. The Facility is located upgradient and approximately 500 feet from a municipal storm sewer which drains to the Gwynns Falls Run, a tributary of the Patapsco River.

14. Gwynns Falls Run and the Patapsco River are navigable waters of the United States as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

15. The Facility is a non-transportation-related facility under the definition incorporated by reference at 40 C.F.R. § 112.2 and set forth in an appendix thereto and published on December 18, 1971, at 36 Fed. Reg. 24,080 (Dec. 18, 1971).

16. Pursuant to the Oil Pollution Prevention regulations at 40 C.F.R. § 112.7(h)(1), a loading rack must drain into a catchment basin, treatment system or quick drainage system sufficient to contain at least the maximum cargo capacity of any single storage compartment of a vehicle using the loading rack.

17. Upon information and belief, the McComas tanker trucks which use the loading rack at the Facility have capacities as great as 2,800 gallons.

18. As of EPA's October 2006 inspection, the Facility's loading rack area drained to two oil-water separators which have a combined catchment volume of 1,500 gallons.

19. The loading rack at the Facility did not have a secondary containment system sufficient to contain a discharge of oil of at least 2,800 gallons from a tanker truck using the loading rack.

20. The Respondent's failure to have secondary containment for the loading rack at the Facility with a capacity of at least 2,800 gallons in October 2006 constitutes a violation of the Oil Pollution Prevention regulations at 40 C.F.R. § 112.7(h)(1).

21. As a result of the violation alleged in the preceding paragraph, the Respondent is liable for the period in question for a civil penalty not to exceed \$11,000.00 per violation, up to a maximum of \$32,500.00, pursuant to Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. §1321(b)(6)(B)(i), and 40 C.F.R. §19.4. Each day a violation continues constitutes a separate violation for the purposes of calculating the statutory maximum penalty.

IV. PROPOSED PENALTY

22. Based on the foregoing allegations, and pursuant to the authority of Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. §1321(b)(6)(B)(i), and 40 C.F.R. §19.4, the Complainant proposes that the Regional Administrator issue a Final Order assessing an aggregate administrative penalty against McComas in the amount of **\$9,910.10**. The Complainant proposes this penalty amount based upon the best information available to EPA at this time and after considering the applicable statutory penalty factors in Section 311(b)(8) of the CWA, 33 U.S.C. §1321(b)(8). These factors include: the seriousness of the violation; 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 nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the violation; the economic impact of the penalty on the violator; and any other matters as justice may require. The proposed penalty may be adjusted if Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty. This proposed civil penalty does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. §2412.

V. ANSWER TO THE ADMINISTRATIVE COMPLAINT AND OPPORTUNITY TO REQUEST A HEARING

23. Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), and Section 22.15(c) of the Consolidated Rules, the Respondent may request a hearing. The procedures for the hearing, if one is held, are set out in the Consolidated Rules, a copy of which was enclosed with the original Complaint.

24. 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, the Respondent shall file an original and one copy of a written answer to the Complaint ("Answer") with the Regional Hearing Clerk and shall serve copies of its Answer on all other parties. Any Answer to the Complaint must be filed within thirty (30) days after service of this Administrative Complaint with:

Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

The Respondent must also provide a copy of its Answer to the attorney representing EPA in this matter at the following address:

John J. Monsees
Senior Assistant Regional Counsel (3RC42)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

25. The Respondent's Answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the Administrative Complaint with regard to which Respondent has knowledge. Where the Respondent has no knowledge of a particular factual allegation, the Respondent shall so state and the allegation shall be deemed denied. Failure to admit, deny, or explain any material factual allegation contained in the Administrative Complaint constitutes an admission of the

allegation. The Respondent's Answer shall also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) whether a hearing is requested.

26. If the Respondent fails to submit an Answer within thirty (30) days of receipt of this Administrative Complaint, and the case is not otherwise disposed of through settlement, the Respondent may be found in default. For purposes of this action, default constitutes an admission of all facts alleged in the Administrative Complaint and a waiver of the right to a hearing to contest such factual allegations.

VI. SETTLEMENT

27. The Respondent may resolve the proceeding by paying the specific penalty proposed in the Complaint or in Complainant's prehearing exchange in full, as specified by Complainant, and by filing with Regional Hearing Clerk a copy of the check or other instrument of payment. If the Complaint contains a specific proposed penalty and the Respondent pays that proposed penalty in full within thirty (30) days after receiving the Complaint, then no Answer need be filed.

28. The Respondent shall pay the penalty either by the submission of a cashier's or certified check, or by means of an electronic funds transfer ("EFT").

29. If the Respondent pays the penalty with a cashier's or certified check, the check shall be drawn for the full amount due and made payable to "**Environmental Protection Agency**". The check must include the notation "**OSTLF-311**" and the docket number of this action: **CWA-03-2007-0098**. If Respondent submits the check via the U.S. Postal Service, the check should be sent to the following address:

U.S. Environmental Protection Agency
P.O. Box 371099M
Pittsburgh, Pa. 15251.

If the Respondent uses a private delivery service, the check should be sent to the following address:

Mellon Client Service Center
ATTN: Shift Supervisor,
Lockbox 371099M/Account 9109125
500 Ross Street, Pittsburgh, Pa. 15262-0001.

Respondent must file a copy of its check with the Regional Hearing Clerk at the following address:

Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

30. If the Respondent elects to pay the penalty by an EFT, Respondent must instruct its agent to transfer funds to:

Mellon Bank, ABA 043000261
Account 9109125
22 Morrow Drive, Pittsburgh, Pa. 15235.

Respondent also must file a copy of the EFT confirmation with the Regional Hearing Clerk at the above address.

31. The Respondent also shall send a copy of the check or EFT confirmation to the EPA attorney assigned to this case:

John J. Monsees
Senior Assistant Regional Counsel (3RC42)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

VII. EX PARTE COMMUNICATIONS

32. Please be advised that Section 22.8 of the Consolidated Rules prohibits any ex parte discussion of the merits of a case, any communication regarding the substance of any settlement negotiation or the substance of any proposed consent order lodged with the Hearing Clerk, or any communication regarding the substance of a recommended decision by the Presiding Officer with the EPA Administrator, the EPA Region III Regional Administrator, the Presiding Officer, or any other Agency decision maker.

VIII. INFORMAL CONFERENCE

33. EPA encourages all parties against whom a civil penalty is proposed to pursue settlement through an informal conference. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by the Complainant, signed by the parties and incorporated into a

Final Order signed by the Regional Administrator or his designee. **SETTLEMENT CONFERENCES SHALL NOT AFFECT THE REQUIREMENT TO FILE A TIMELY ANSWER TO THE COMPLAINT.** To request an informal conference relating to this Administrative Complaint, the Respondent or its counsel should contact John J. Monsees, Senior Assistant Regional Counsel, at (215) 814-2632.

3/1/07
Date

James J. Burke
Complainant
James J. Burke, Director
Hazardous Site Cleanup Division

Upon information and belief, I certify this Administrative Complaint as a legally sufficient pleading:

1/31/07
Date

John J. Monsees
John J. Monsees
Senior Assistant Regional Counsel (3RC42)

Of Counsel:

United States Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Phone: (215) 814-2632
Fax: (215) 814-2603