



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

**VIA OVERNIGHT MAIL**

July 1, 2010

Mr. John C. Coyne  
Director of Environmental Health and Safety  
Hydrocarbon Recovery Services, Inc. and  
International Petroleum Corporation d/b/a FCC Environmental  
523 N. Sam Houston Parkway East, Suite 400  
Houston, TX 77060

**RE: Administrative Complaint Alleging a Violation of Section 311(b)(3) of the Clean Water Act by the International Paper Corporation d/b/a FCC Environmental; Docket Number CWA-03-2010-0327**

Dear Mr. Coyne:

Enclosed is an Administrative Complaint which the United States Environmental Protection Agency ("EPA") is issuing to the International Paper Corporation d/b/a FCC Environmental (hereafter referred to as "Respondent") concerning a violation of Section 311(b)(3) of the Clean Water Act, as amended, ("CWA"), 33 U.S.C. §1321(b)(3). The violation is a result of a June 2, 2008 discharge of an estimated thirty (30) barrels of oil from a tanker truck traveling on Pennsylvania State Highway Route 41 in Avondale, Chester County Pennsylvania

This Administrative Complaint is issued pursuant to Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. §1321(b)(6)(B)(i), and proposes a Class I penalty of \$11,000.00 against the Respondent. Generally, Class I penalties may not exceed \$11,000 per violation, with a \$32,500 maximum for each assessed penalty. This proposed penalty does not constitute a demand as defined in the Equal Access to Justice Act, 28 U.S.C. §2412.

This Administrative Complaint is being issued in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 64 Fed. Reg. 40138 (July 23, 1999), 40 C.F.R. Part 22 ("Consolidated Rules"). You should carefully read the Consolidated Rules and the Administrative Complaint to determine your available response alternatives. For your convenience, a copy of the proposed Consolidated Rules has been enclosed with the Administrative Complaint.

## **RESPONSE TO THE ADMINISTRATIVE COMPLAINT**

The Respondent may resolve this matter by paying the specific penalty proposed in the Complaint. Pursuant to the Settlement provisions of the Complaint (Section VI), if the Respondent pays the specific penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, pursuant to the Consolidated Rules, it need not file a written answer to the Complaint.

However, if your company wishes to contest any material fact upon which the Complaint is based, contend that the proposed penalty is inappropriate, assert any defense, or contend that you are entitled to judgment as a matter of law, you must file a written answer (one original and one copy) with the Regional Hearing Clerk within thirty (30) days of service of the Administrative Complaint. The Hearing Clerk's mailing address may be found within the Administrative Complaint. If the Respondent fails to submit a timely response to the Administrative Complaint it may be found in default. Once found in default you will be deemed to have admitted all factual allegations asserted in the complaint and have waived your right to a hearing on such factual allegations. In addition, in the event that the Respondent believes that the proposed penalty will create an undue financial hardship on its business and are entitled to an "ability to pay settlement" for less than the proposed penalty, the Respondent will be required to submit financial information related to the business. If the Respondent believes it is entitled to an ability-to-pay settlement, please contact EPA immediately regarding the documentation EPA will need to consider such a claim.

Your company may qualify as a "small business" under the Small Business Regulatory Enforcement and Fairness Act ("SBREFA"). Please see the Small Business Information enclosure accompanying this letter. This enclosure provides information on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities and also provides information on compliance assistance. As noted in the enclosure, any decision to participate in such a program or to seek compliance assistance does not relieve you of your obligation to respond in a timely manner to an EPA request or other enforcement action, create any new rights or defenses under law and will not affect EPA's decision to pursue this enforcement action. To preserve your legal rights, you must comply with all rules governing the administrative enforcement process. The Ombudsman and fairness boards do not participate in the resolution of EPA's enforcement action.

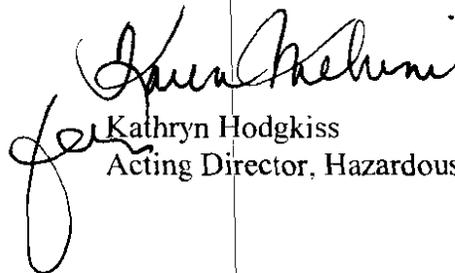
In addition, your company may be required to disclose to the Securities and Exchange Commission ("SEC") the existence of certain administrative or judicial proceedings taken against your company under Federal, State or local environmental laws. Please see the enclosed "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings" for more information about this requirement and to aid you in determining whether your company is subject to it.

## EX PARTE COMMUNICATIONS

Please be advised that Section 22.8 of the Consolidated Rules prohibits any *ex parte* discussion of the merits of the proceeding between any interested party outside of the EPA or any EPA staff member who performs a prosecutorial or investigative function in this proceeding (or any factually related proceeding) and the EPA Administrator, the members of the Environmental Appeals Board, the EPA Region III Regional Administrator, the Regional Judicial Officer, or any other person who is likely to advise these officials in the decision on the case.

The Respondent has the right to retain and be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA. You, or your attorney, should contact Yvette Hamilton-Taylor, Senior Assistant Regional Counsel, at (215) 814-2636, at your earliest convenience to discuss the matters herein.

Sincerely,



Kathryn Hodgkiss  
Acting Director, Hazardous Site Cleanup Division

Enclosures

cc: Yvette Hamilton-Taylor (3RC43)  
Paula J. Curtin (3HS61)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

In The Matter of:

**International Petroleum  
Corporation of Delaware  
d/b/a FCC Environmental**

**505 South Market Street  
Wilmington, DE 19801**

Respondent

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

Proceeding to Assess Class I  
Civil Penalties Under Section  
311 of the Clean Water Act, *as  
amended*, 33 U.S.C. § 1321.

Docket No. CWA-03-2010-0327

**I. STATUTORY AUTHORITY**

1. This Administrative Complaint and Opportunity to Request Hearing and Conference (“Complaint”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 311(b)(6)(B) of the Clean Water Act, as amended, (“CWA”), 33 U.S.C. § 1321(b)(6)(B). The Administrator has delegated this authority to the Regional Administrator of EPA, Region III, by Delegation No. 2-51 who in turn has delegated it to the Director of the Region's Hazardous Site Cleanup Division (“Complainant”) by Delegation No. 2-51.

2. EPA has determined that Class I penalty proceedings for violations of Section 311(b)(3), 33 U.S.C. § 1321(b)(3), and regulations issued under Section 311(j), 33 U.S.C.

§ 1321(j), and other provisions of the CWA, shall be conducted 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” (“Consolidated Rules”), 40 C.F.R. Part 22.

3. Therefore, pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), and in accordance with the Consolidated Rules, Complainant hereby requests that the Regional Administrator assess civil penalties against the International Petroleum Corporation of Delaware, d/b/a/ FCC Environmental (hereinafter “Respondent” or “IPC”), for the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in a quantity that has been determined may be harmful, in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

4. For purposes of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. § 110.3 to include discharges of oil that cause a film or a sheen upon or discoloration of the surface of a water or an adjoining shoreline or cause a sludge or emulsion to be deposited beneath the surface of a water or upon an adjoining shoreline.

5. “Oil” is defined at Section 311(a)(1), 33 U.S.C. § 1321(a)(1), for purposes of Section 311(b)(3) of the CWA, to include any kind of oil in any form, including petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil.

6. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), defines “discharge” to include any spilling, leaking, pumping, pouring, emitting, or dumping other than federally permitted discharges pursuant to a permit under Section 402 of the CWA, 33 U.S.C. § 1342.

7. For purposes of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), “navigable waters” is defined by 40 C.F.R. § 112.2, to include, among other things, tributaries to waters that could be used for industrial purposes or interstate commerce.

8. For purposes of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), “sheen” is defined by 40 C.F.R. § 110.1 as an iridescent appearance on the surface of water.

9. 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 and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges . . . .”

## **II. THE RESPONDENT**

10. Respondent is a Delaware corporation that is headquartered at 505 S. Market Street, Wilmington, Delaware 19801 and is registered to do business in the State of Delaware.

11. Respondent is the owner of an onshore Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. §1321(a)(6), and 40 CFR §112.2, which is a tanker truck (“Facility”) that was located on Pennsylvania State Highway Route 41 in Avondale, Chester County, Pennsylvania on or about June 2, 2008.

## **III. GENERAL ALLEGATIONS**

12. The allegations in Paragraphs 1 through 11 are incorporated by reference as if fully set forth herein.

13. 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.

14. The Respondent's 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.

15. On or about June 2, 2008, a tanker truck (the "Facility") that is owned and operated by Respondent discharged approximately 400 gallons of No. 5 fuel oil onto Pennsylvania State Highway Route 41 in Avondale, Chester County, Pennsylvania. The oil was then discharged through a nearby storm drain into Trout Run, which flows into White Clay Creek, which in turn flows into the Christiana River, a navigable waterway. The oil that entered Trout Run caused a sheen on the surface of Trout Run. As a result of this discharge, an estimated thirty (30) gallons of oil entered Trout Run.

16. Trout Run is a navigable water of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. §1362(7), and 40 C.F.R. §112.2 because it is a tributary of White Clay Creek.

17. White Clay Creek is a navigable water of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. §1362(7), and 40 C.F.R. §112.2 because it is a tributary of the Christiana River.

18. White Clay Creek has received a special designation by the United States Congress pursuant to the National Wild and Scenic River Act, 16 U.S.C. §1271 et seq. as an environmentally sensitive watershed.

19. The Christiana River is a navigable water of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. §1362(7), and 40 C.F.R. §112.2.

**COUNT I – ILLEGAL DISCHARGE OF OIL  
INTO TROUT RUN**

20. Respondent's June 2, 2008, discharge of oil from its Facility caused a sheen upon or discoloration of the surface of Trout Run and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. §110.3, which implements Sections 311(b)(3) and (b)(4) of the CWA.

21. Respondent's June 2, 2008, discharge of oil from its Facility into or upon Trout Run occurred in a quantity that has been determined may be harmful under 40 CFR §110.3 and Sections 311(b)(3) and (b)(4) of the CWA, 33 U.S.C. §1321(b)(3) and (b)(4), and violated Section 311(b)(3) of the CWA because it caused a film or sheen upon or discoloration of the surface of Trout Run.

**IV. PROPOSED PENALTY**

22. The allegations in Paragraphs 12 through 21 are incorporated by reference as if fully set forth herein.

23. 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), the Complainant proposes that the Regional Administrator or his designee issue a Final Order assessing an administrative penalty against the Respondent in the amount of \$11,000.00.

24. The proposed penalty was determined after taking into account the factors identified at Section 311(b)(8) of the CWA, 33 U.S.C. §1321(b)(8). These factors include: the seriousness of the violations; the economic benefit to the violator 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. This proposed penalty does not constitute a demand as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. 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.

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

25. Pursuant to Section 311(b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(B), 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.

26. If the Respondent contests any material fact upon which the Complaint is based; contends that the proposed penalties are inappropriate; or contends that it is entitled to judgment as a matter of law; 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 Answers 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:

Yvette Hamilton-Taylor  
Senior Assistant Regional Counsel (3RC43)  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-2636

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

28. If 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, 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 AND QUICK RESOLUTION**

29. In accordance with Section 22.18(a) of the Consolidated Rules of Practice, the Respondent may resolve this proceeding at any time by either: (1) paying the full penalty described in Paragraph 23 above, or (2) filing a written statement with the Regional Hearing Clerk at the address provided above agreeing to pay, and subsequently paying within sixty (60)

days of Respondent's receipt of this Complaint, the full penalty proposed in Paragraph 23. If Respondent pays or agrees to pay within sixty (60) days the specific penalty proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to the Consolidated Rules of Practice, no Answer need be filed.

30. If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving this Complaint, stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and a copy shall be provided to Ms. Yvette Hamilton-Taylor (3RC43), Senior Assistant Regional Counsel, at the address below. Within sixty (60) days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty in accordance with the instructions provided in Paragraphs 33 through 36, below.

31. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.

32. In accordance with 40 C.F.R. § 22.18(a)(3), upon receipt of payment in full, the Regional Judicial Officer or Regional Administrator shall issue a Final Order. Payment by Respondent shall constitute a waiver of Respondent's right to contest the allegations contained in this Complaint and to appeal the final order.

33. Payment shall be made by a cashier's or certified check, or by an electronic funds transfer ("EFT"). If paying by check, the Respondent shall submit a cashier's or certified check,

payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311." If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

If the Respondent sends payment by a private delivery service, the payment shall be addressed to:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Attn: Natalie Pearson (314/418-4087)

If paying by EFT, the Respondent shall make the transfer to:

Federal Reserve Bank of New York  
ABA 021030004  
Account 68010727  
33 Liberty Street  
New York, NY 10045

If paying by EFT, field tag 4200 of the Fedwire message shall read: (D 68010727 Environmental Protection Agency). In the case of an international transfer of funds, the Respondent shall use SWIFT address FRNYUS33.

34. If paying through the Department of Treasury's Online Payment system, please access [www.pay.gov](http://www.pay.gov), enter sfo 1.1 in the search field. Open the form and complete the required fields and make the payment. Note that the type of payment is "civil penalty," the docket number "CWA-03-2010-0327" should be included in the "Court Order # or Bill #" field and 3 should be included as the Region number.

35. If paying by check, the Respondent shall note on the penalty payment check the title and docket number of this case. The Respondent shall submit a copy of the check (or, in the case of an EFT transfer, a copy of the EFT confirmation) to the following person:

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

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

Yvette Hamilton-Taylor  
Senior Assistant Regional Counsel (3RC43)  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-2636

## **VII. EX PARTE COMMUNICATIONS**

37. The following EPA offices, and the staffs thereof, are designated as the trial staff to represent EPA as a party in this case: the Region III Office of Regional Counsel; the Region III Hazardous Site Cleanup Division; the Office of the EPA Assistant Administrator for Solid Waste and Emergency Response; and the Office of the EPA Assistant Administrator for Enforcement and Compliance Assurance. Please be advised that, pursuant to Section 22.8 of the Consolidated Rules, from the date of this Complaint until the final Agency decision in this case, the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, the Presiding Officer, or any person who is likely to advise these officials on any decision in the proceeding, shall not have any ex parte communication about the merits of the proceeding with

the Respondent, a representative of Respondent, or any person outside EPA having an interest in the proceeding, or with any EPA staff member who performs a prosecutorial or investigative function in this proceeding or a factually related proceeding. Any communication addressed to the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party, shall be regarded as argument made in the proceeding, and shall be served upon all other parties.

#### **VIII. INFORMAL CONFERENCE**

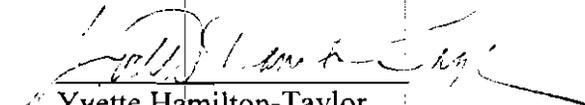
38. Respondent may request an informal conference concerning the alleged violations and the amount of the proposed penalty. The request for an informal conference does not extend the thirty (30) day period in which the Respondent must submit its written Answer in order to preserve the right to a hearing. To request an informal conference relating to this Administrative Complaint, Respondent should contact Ms. Yvette Hamilton-Taylor, Senior Assistant Regional Counsel, at (215) 814-2636.

Signed this 30 day of June, 2010

  
Kathryn A. Hodgkiss, Acting Director  
Hazardous Site Cleanup Division

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

Date: June 30, 2010

  
Yvette Hamilton-Taylor  
Senior Assistant Regional Counsel

OF COUNSEL:

United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
Phone: 215-814-2636  
Fax: 215-814-2604