



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
5 POST OFFICE SQUARE, SUITE 100  
BOSTON, MA 02109-3912

RECEIVED

MAY 10 2016

EPA ORC WS  
Office of Regional Hearing Clerk

May 10, 2016

Wanda Santiago, Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 1 (ORA 18-1)  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

By HAND

Re: *In the matter of Townsend Oil Co., Inc.*  
Docket No. CWA-01-2016-40

Dear Ms. Santiago:

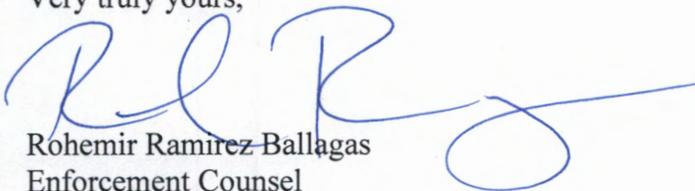
Enclosed for filing are the following original documents, and one copy of each, relating to the above-referenced matter:

1. Administrative Complaint and Notice of Opportunity for Hearing; and
2. Certificate of Service.

Kindly file the documents in the usual manner. I have also included a copy of the letter notifying the Massachusetts Department of Environmental Protection of the filing of this Complaint.

Thank you very much for your help.

Very truly yours,

  
Rohemir Ramirez-Ballagas  
Enforcement Counsel

Enclosures

cc: Mark Townsend, CEO, Townsend Energy  
Joseph Canzano EPA Region 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

IN THE MATTER OF ) TOWNSEND OIL CO., INC. ) 27 Cherry Street ) Danvers, MA 01923 )  Respondent. )  Proposing to Assess a Civil Penalty Under ) Section 311(b)(6) of the Clean ) Water Act, 33 U.S.C. §1321(b)(6) )	Docket No. CWA-01-2016-0040  <b>COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING</b>
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**I. STATEMENT OF AUTHORITY**

1. This administrative Complaint and Notice of Opportunity for Administrative Hearing (“Complaint”) is issued to Townsend Oil Co, Inc. (“Respondent” or “Townsend Oil”) pursuant to Section 311(b)(6) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. § 1321(b)(6), 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 (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. The Complainant is the Director, Office of Environmental Stewardship, United States Environmental Protection Agency, Region 1 (“EPA”).

2. Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), and in accordance with the Consolidated Rules of Practice, Complainant hereby provides notice of a proposal to assess a civil penalty against Respondent for the following violations of the Act:

1) failing to maintain and fully implement a Spill Prevention Control and Countermeasure (“SPCC”) Plan in accordance 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 CWA, 33 U.S.C. § 1321(j).

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## **II. STATUTORY AND REGULATORY BACKGROUND**

### **Spill Prevention Control and Countermeasure Plan**

3. The CWA is designed to restore and maintain the chemical, physical, and biological integrity of the nation's waters. Section 101(a) of the Act, 33 U.S.C. § 1251(a).

4. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), defines "person" to include "an individual, firm, corporation, association, [or] partnership."

5. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as "the waters of the United States, including the territorial seas."

6. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes the Administrator of EPA to require the owner or operator of any point source to provide such information as the Administrator may reasonably need to carry out the objectives of the CWA.

7. Section 311(j)(1) of the Act, 33 U.S.C. § 1321(j)(1), 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 onshore and offshore facilities, and to contain discharges . . . ."

8. Under the authority of Section 311(j)(1) of the Act, the Oil Pollution Prevention regulations, found 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 which, 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). However, except as provided in 40 C.F.R. § 112.1(f), these requirements do not

apply to the owner or operator of any facility which meets both of the following requirements:

(1) the completely buried storage capacity of the facility is 42,000 U.S. gallons or less of oil; and

(2) the aggregate aboveground storage capacity of the facility is 1,320 U.S. gallons or less of oil.

40 C.F.R. § 112.1(d)(2).

9. Under 40 C.F.R. § 112.3(a)(1), an owner or operator of an onshore facility that became operational prior to August 16, 2002 and 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 must prepare and fully implement a Spill Prevention, Control, and Countermeasure (“SPCC”) plan in accordance with 40 C.F.R. § 112.7.

10. Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), provides for the assessment of penalties for violations of Section 311 of the CWA.

### **III. ALLEGATIONS**

11. Respondent is a company organized under the laws of the Commonwealth of Massachusetts with its principal place of business in 27 Cherry St, Danvers, MA.

12. Respondent is a “person” within the meaning of Sections 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).

13. Respondent owns and operated a fuel oil bulk plant at 75 West Main Street, Georgetown, Massachusetts (the “Facility”).

14. Respondent has, at all times relevant to this Complaint controlled all daily business and industrial operations at the Facility and otherwise meets the definition of “operator” of the Facility, as defined at Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), 40 C.F.R. § 112.2.

15. The Facility is located within 1,500 feet from the Pentucket Pond Outlet

Reservoir.

16. At all times relevant to the allegations in this Complaint, Respondent engaged in storing, using, and consuming “oil” or oil products located at the Facility within the meaning of 40 C.F.R. § 112.2.

17. At all times relevant to the allegations in this Complaint, the Facility had an aggregate above ground oil storage capacity greater than 1,320 gallons in containers each with a shell capacity of at least 55 gallons.

18. 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.

19. The Facility became operational prior to August 16, 2002.

20. The Facility is a “non-transportation-related” facility within the meaning of Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.

21. Accordingly, the Facility is a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to navigable waters of the United States or its adjoining shorelines in a harmful quantity.

22. Respondent is therefore subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112 at the Facility.

23. On November 3, 2015, EPA conducted an inspection (the “Inspection”) at the Facility to review compliance with the Oil Pollution Prevention regulations.

#### **IV. VIOLATIONS**

##### **COUNT 1: FAILURE TO PREPARE AND FULLY IMPLEMENT A SPILL POLLUTION CONTROL AND COUNTERMEASURE PLAN**

24. Paragraphs 1 through 23 are incorporated herein by reference.

25. During the Inspection and based on additional information submitted by Respondent, EPA determined that Respondent had failed to maintain and fully implement an SPCC Plan for the Facility until December 14, 2015, in violation of Section 311(j) of the Act.

26. Respondent failed to adequately provide 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. Respondent's failure to maintain and fully implement an SPCC plan includes, but is not limited to the following deficiencies:

- a. SPCC Plan was not certified by a registered Professional Engineer.
- b. Failure to amend the SPCC plan if the Facility has had a change in: design, construction, operation, or maintenance which affects the facility's discharge potential.
- c. Mobile refueling station did not have secondary containment.
- d. No Inspection or Training records were available for review.
- e. Inadequate containment for Loading Area.
- f. Containment system did not hold at least the maximum capacity of the largest single compartment of any tank car or tank truck.
- g. Aboveground tanks were not subject to periodic integrity testing, such as hydrostatic, nondestructive methods, etc.
- h. Starter controls on pumps were not locked in the "off" position or located at a site accessible only to authorized personnel when pumps are not in a non-operating or standby status.
- i. Causes of leaks resulting in accumulations of oil in diked areas were not promptly corrected.

27. By failing to maintain and fully implement an SPCC plan for the Facility in accordance with the requirements of 40 C.F.R. §§ 112.7 and 112.8, as described above, Respondent violated 40 C.F.R. § 112.3 and Section 311(j) of the CWA, 33 U.S.C. § 1321(j), from at least December 2011 until December 14, 2015.

**V. NOTICE OF PROPOSED ASSESSMENT OF CIVIL PENALTY**

28. Based upon the foregoing allegations and pursuant to the authority of Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. §§ 2461 *et seq.*, the Debt Collection Improvement Act of 1996, 31 U.S.C. §§ 3701 *et seq.*, and the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4 (61 Fed. Reg. 69360 (Dec. 31, 1996); 69 Fed. Reg. 7121 (Feb. 13, 2004); 73 Fed. Reg. 75340 (Dec. 11, 2008); 78 Fed. Reg. 66643 (Nov. 6, 2013), Complainant proposes that a Final Order assessing civil penalties be issued against Respondent of up to sixteen thousand dollars (\$16,000) per day for each day during which the violations continued, up to a maximum of one hundred and eighty-seven thousand five hundred dollars (\$187,500) for the violations described in Count 1 of the Complaint.

29. The violations of the Oil Pollution Prevention regulations alleged in Count 1 above represent significant violations of the CWA because failure to maintain and fully implement an adequate SPCC plan leaves a facility unprepared to deal with an oil spill and to prevent a spill from having potentially serious environmental consequences.

30. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty, as required by the Consolidated Rules of Practice, taking into account the seriousness, nature, circumstances, extent, and gravity of the violation, or violations, and Respondent's prior compliance history, the degree of culpability for the cited violations, any economic benefit or

savings accruing to Respondent resulting from the violations, Respondent's ability to pay the proposed penalties, and such other matters as justice may require.

## **VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

31. Pursuant to Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), and 40 C.F.R. § 22.14, notice is hereby given that Respondent has the right to request a hearing on any material fact alleged raised in this Complaint and on the appropriateness of any proposed penalty. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is enclosed. Members of the public, to whom EPA is obliged to give notice of this proposed action, have a right under Section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C), to comment on any proposed penalty and to be heard and to present evidence at the hearing.

32. Respondent's Answer must comply with 40 C.F.R. § 22.15 and must be filed with the Regional Hearing Clerk at address listed below within thirty (30) days of receipt of the Complaint. To be entitled to a hearing, Respondent must include its request for a hearing in its Answer to the Complaint.

33. The original and one copy of the Answer, as well as a copy of all other documents which Respondent files in this action, must be sent to:

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

Respondent should also send a copy of the Answer, as well as a copy of all other documents which Respondent files in this action, to Rohemir Ramirez Ballagas, the attorney assigned to represent EPA and designated to receive service in this matter at:

*Administrative Complaint*  
Docket No. CWA-01-2016-0040

U.S. EPA, Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109

Rohemir Ramirez Ballagas  
Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (Mail Code: OES04-3)  
Boston, Massachusetts 02109-3912

34. If Respondent fails to file a timely Answer to this Complaint, it may be found to be in default, pursuant to 40 C.F.R. § 22.17, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

35. The filing and service of documents, other than the complaint, rulings, orders, and decisions, in all cases before the Region 1 Regional Judicial Officer governed by the Consolidated Rules of Practice may be filed by email consistent with the “Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer,” a copy of which has been provided with the Complaint.

36. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in any default order shall become due and payable by Respondents without further proceedings thirty (30) days after the default order becomes final.

**VII. CONTINUED COMPLIANCE OBLIGATION**

37. Neither assessment nor payment of a civil penalty pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), shall affect Respondent's continuing obligation to comply with the CWA, the regulations promulgated thereunder, or any other applicable requirements of Federal, State, or local law.

Susan Studlien

Susan Studlien, Director  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency  
Region 1 – New England

05/06/2016

Date

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

IN THE MATTER OF	)	Docket No. CWA-01-2016-0040
	)	
TOWNSEND OIL CO., INC.	)	
27 Cherry Street	)	<b>COMPLAINT AND NOTICE OF</b>
Danvers, MA 01923	)	<b>OPPORTUNITY FOR HEARING</b>
	)	
Respondent.	)	
	)	
Proposing to Assess a Civil Penalty	)	
Under Section 311(b) of the Clean	)	
Water Act, 33 U.S.C. §1321(b)	)	

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity to Request a Hearing has been sent to the following persons on the date noted below:

Original and one copy,  
hand-delivered:

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

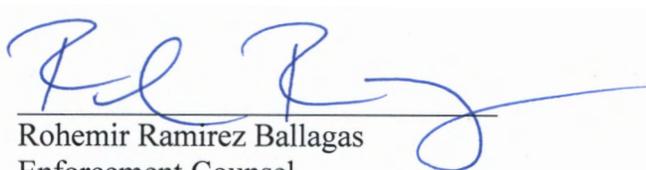
Copy by Certified Mail, Return Receipt Requested, with a copy of 40 C.F.R. Part 22, and a copy of Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer:

Mark Townsend, CEO  
Townsend Energy  
Townsend Oil Company Incorporated  
27 Cherry Street  
Danvers, MA 01923

Copy, by Certified Mail,  
Return Receipt Requested

Pamela Talbot  
Massachusetts Department of Environmental Protection  
One Winter Street, 7<sup>th</sup> Floor  
Boston, MA 02108

Dated: 5/10/14



Rohemir Ramirez Ballagas  
Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (OES04-3)  
Boston, MA 02109-3912  
Tel (617) 918-1262  
Fax (617) 918-1862