



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

RECEIVED

AUG 31 2012

EPA ORC *WS*
Office of Regional Hearing Clerk

August 31, 2012

BY HAND

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

Re: In the matter of Red Shield Acquisition LLC
(dba Old Town Fuel & Fiber), Docket No. CWA-01-2012-0075

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 Maine Department of Environmental Protection of the filing of this Complaint. Thank you very much for your help.

Very truly yours,

A handwritten signature in blue ink that reads "Laura J. Berry".

Laura J. Berry
Enforcement Counsel

Enclosures

cc: Richard D. Arnold, President, Red Shield Acquisition LLC (dba Old Town Fuel & Fiber)
Alex Rosenberg, EPA Region 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

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Office of Regional Hearing Clerk

IN THE MATTER OF)

) Docket No. CWA-01-2012-0075

RED SHIELD ACQUISITION LLC)
(d/b/a OLD TOWN FUEL & FIBER))
24 Portland Street, P.O. Box 564)
Old Town, ME 04468)

**COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

) Respondent.)

) Proposing to Assess a Civil Penalty Under)
) Sections 309(g) and 311(b)(6) of the Clean)
) Water Act, 33 U.S.C. §§ 1319(g), 1321(b)(6))
_____)

I. STATEMENT OF AUTHORITY

1. This administrative Complaint and Notice of Opportunity for Administrative Hearing (“Complaint”) is issued to Red Shield Acquisition LLC d/b/a Old Town Fuel & Fiber (“Respondent” or “Red Shield”) pursuant to Sections 309(g) and 311(b)(6) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. §§ 1319(g) and 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 Sections 309(g) and 311(b)(6) of the CWA, 33 U.S.C. §§ 1319(g) and 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) discharging untreated wastewater containing pollutants into navigable waters of the United States without authorization in violation of Section 301(a) of the CWA, 33

U.S.C. § 1311(a); 2) failing to comply with the terms and conditions of its Maine Pollutant Discharge Elimination System (“MEPDES”) permit; 3) failing to comply with the terms and conditions of the Maine Pollutant Discharge Elimination System Multi-Sector General Permit for Stormwater Discharge Associated with Industrial Activity (“MEMSGP”); and 4) failing to properly maintain and fully implement its 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).

II. STATUTORY AND REGULATORY BACKGROUND

Maine Pollutant Discharge Elimination System (“MEPDES”)

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. To accomplish the objectives of the Act, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into navigable waters except in compliance with the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and EPA’s implementing regulations, found at 40 C.F.R. Part 122.

5. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” to include “an individual, corporation, partnership [or] association.”

6. 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.”

7. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

8. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, among other things, chemical wastes, biological materials, rock, sand, and industrial waste discharged into water.

9. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.”

10. 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.”

11. Forty C.F.R. § 122.2 defines “waters of the United States” to include, among other things: (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; (ii) all inter-state waters; (iii) tributaries to such waters; and (iv) wetlands adjacent to such waters or their tributaries.

12. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires any stormwater discharge “associated with industrial activity” to be authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit.

13. 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, including, among other things, the development and issuance of NPDES permits under Section 402 of the CWA, 33 U.S.C. § 1342.

14. Pursuant to Sections 308 and 402 of the CWA, 33 U.S.C. §§ 1318 and 1342, EPA promulgated stormwater discharge regulations at 40 C.F.R. § 122.26.

15. Forty C.F.R. § 122.26(c)(1) provides that dischargers of stormwater “associated with industrial activity” are required to apply for an individual permit, apply for a permit through a group application, or seek coverage under a general permit.

16. Forty C.F.R. § 122.26(b)(13) defines “storm water” to include stormwater runoff,

snow melt runoff, and surface runoff and drainage.

17. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), provides that the EPA Administrator may authorize a state to issue NPDES permits in accordance with the requirements of the CWA. On January 12, 2001, the Administrator granted the State of Maine the authority to issue Maine Pollutant Discharge Elimination System (“MEPDES”) permits for all areas of the State outside of Indian country, pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b).

18. Section 402(p), 33 U.S.C. § 1342(p), EPA’s implementing regulation 40 C.F.R. § 122.26(a)(1)(ii), and Section 9(a)(1)(ii) of the State of Maine Department of Environmental Protection (“MEDEP”) Rules concerning Applications for Waste Discharge Licenses, 06-096 C.M.R. 521(9)(a)(1)(ii), require stormwater discharges “associated with industrial activity” to be authorized by a NPDES permit.

19. Forty C.F.R. § 122.26(b)(14)(ii) and Chapter 521, Section 9(b)(14)(ii) of the MEDEP Rules concerning Applications for Waste Discharge Licenses, 06-096 C.M.R. 521(9)(b)(14)(ii), specify that “storm water discharge associated with industrial activity” includes stormwater discharge from facilities classified as Standard Industrial Classification (“SIC”) 26, including 2611 (pulp mills).

20. On October 11, 2005, MEDEP issued the 2005 MEPDES Multi-Sector General Permit for Stormwater Discharge Associated with Industrial Activity (“2005 MEMSGP”). Although the expiration date for the 2005 MEMSGP was originally set for October 11, 2010, it remained in effect until the effective date of the 2011 MEDPES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (“2011 MEMSGP”), which was April 26, 2011. The expiration date of the 2011 MEMSGP is April 25, 2016.

21. Under the 2005 MEMSGP and the 2011 MEMSGP, a facility discharging stormwater “associated with industrial activities” is required to submit a Notice of Intent (“NOI”), prepare and implement a Stormwater Pollution Prevention Plan (“SWPPP”), conduct inspections, conduct monitoring and sampling, and meet other eligibility requirements.

22. Section 309(g) of the CWA, 33 U.S.C. § 1319, provides for the assessment of penalties for violations of Sections 301 and 308 of the CWA 33 U.S.C. §§ 1311, 1318, and for violating any condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

Spill Prevention Control and Countermeasure Plan

23. 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”

24. 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).

25. 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.

III. ALLEGATIONS

26. Respondent is a limited liability company organized under the laws of the State of Delaware with its principal place of business in Old Town, Maine.

27. Respondent is a “person” within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

28. Respondent owns and operates a pulp mill at 24 Portland Street in Old Town, Maine (the “Facility”), which is classified under Standard Industrial Classification (“SIC”) code 2611 (Pulp Mills).

29. Respondent controls 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, and under the 2005 MEMSGP and the 2011 MEMSGP.

30. On August 6, 2002, MEDEP issued combination MEPDES permit ME0002020 and Waste Discharge License W002226-5N-F-R (the “2002 Permit”) to the Fort James Operating Company, Red Shield’s predecessor in interest.

31. The 2002 Permit was originally set to expire on August 6, 2007, but it has been administratively continued pursuant to 40 C.F.R. § 122.6, the Maine Administrative Procedure Act, 5 M.R.S.A. § 10002, and the MEDEP Rules Concerning the Processing of Applications and

Other Administrative Matters, 06-096 C.M.R. 2(21)(A).

32. MEDEP administratively modified the 2002 Permit in July 2004 and April 2006.

33. On or about November 4, 2006, Red Shield Environmental LLC acquired ownership of the Facility.

34. On or about July 27, 2007, Red Shield Environmental LLC submitted an application to MEDEP to renew the 2002 Permit.

35. On or about November 3, 2008, Red Shield Acquisition LLC (Respondent in this action) acquired ownership of the Facility.

36. On or about February 22, 2011, Red Shield submitted an amended application for renewal of the 2002 Permit to MEDEP.

37. On or about May 19, 2011, MEDEP approved a renewal of the 2002 Permit with some modifications (the "2011 Permit").

38. The 2011 Permit authorizes Respondent to discharge pollutants from three specific point sources at the Facility (identified as outfall numbers 001, 002 and 003) to the Penobscot River subject to the conditions specified in the 2011 Permit.

39. Outfalls referred to as numbers 001, 002, and 003 in Respondent's 2011 Permit for the Facility discharge into the Penobscot River.

40. Outfall numbers 001, 002, and 003 are "point sources" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

41. The discharges from outfall number 001 contain chemical wastes, biological materials, and industrial waste, which are "pollutant[s]" within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6).

42. The discharges from outfall number 002 contain non-contact cooling waters,

which contain heat, a “pollutant” within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6).

43. The discharges from outfall number 003 contain filter backwash waters which contain rock, sand, and residual chlorine, “pollutant[s]” within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6).

44. Respondent also applied for and received coverage for discharges of stormwater associated with industrial activity under the 2005 MEMSGP and the 2011 MEMGSP (Permit number MER05B948).

45. Respondent was authorized under the 2005 MEMSGP and the 2011 MEMSGP to discharge stormwater associated with industrial activity from six specific point sources at the Facility (identified in Respondent’s SWPPP as outfall numbers SW1, SW2, SW3, SW4, SW5, and SW6) to the Penobscot River, subject to the terms and conditions specified in the 2005 MEMSGP and the 2011 MEMSGP.

46. Outfalls referred to as numbers SW1, SW2, SW3, SW4, SW5, and SW6 in Respondent’s SWPPP discharge stormwater associated with industrial activity into the Penobscot River.

47. Outfall numbers SW1, SW2, SW3, SW4, SW5, and SW6 are “point sources” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

48. The Penobscot River and the Atlantic Ocean into which it flows are “waters of the United States,” as defined in 40 C.F.R. § 122.2, and, thereby, “navigable waters,” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

49. 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.

50. 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.

51. The Facility is located in the Penobscot River flood plain.

52. 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.

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

54. 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.

55. 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.

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

57. On or about August 4, 2009, April 12, 2011, May 3, 2011, June 28, 2011, August 2, 2011, August 10, 2011, and March 22, 2012, authorized representatives of the State of Maine and EPA visited the Facility to review compliance with Federal and State environmental laws and regulations, including compliance with the CWA (the “Inspections”).

IV. VIOLATIONS

COUNT 1: UNAUTHORIZED DISCHARGE OF UNTREATED WASTEWATER

58. Paragraphs 1 through 57 are incorporated herein by reference.

59. During regular operation of the Facility, untreated wastewater from the utilities area collects in a below-grade wet well inside a pump house and is then pumped underground to

the wastewater treatment plant on site.

60. During normal operations, untreated wastewater is pumped from the pump house to the treatment plant using any or all of three electric in-line sump pumps. In the event of a power outage, untreated wastewater is instead pumped to the treatment plant using an emergency diesel pump, which is triggered to turn on by a high level alarm float and is triggered to turn off by a lower level float.

61. On August 1, 2011 at approximately 11:36 p.m., Respondent discharged approximately 50,000 gallons of untreated wastewater from the pump house to the Penobscot River when the emergency diesel pump failed to start during an electrical storm.

62. On August 2, 2011 at approximately 12:20 a.m., Respondent discharged approximately 40,000 gallons of untreated wastewater from the pump house to the Penobscot River when the emergency diesel pump again failed during the same electrical storm.

63. The pump house is a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

64. Respondent is not authorized under the terms and conditions of the 2011 Permit to discharge untreated wastewater from the pump house to the Penobscot River.

65. By discharging untreated wastewater into waters of the United States on August 1, 2011, and August 2, 2011, without authorization under any NPDES permit, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**COUNT 2: FAILURE TO COMPLY WITH MEPDES
(WASTEWATER) PERMIT TERMS AND CONDITIONS**

66. Paragraphs 1 through 65 are incorporated herein by reference.

67. From at least March 2009 through the present, Respondent has treated wastewater from the Facility by way of an activated sludge process. Wastewater receives treatment via a bar

screen, two primary clarifiers (each 150 feet in diameter), an aeration basin, and two secondary clarifiers (each 170 feet in diameter) before being discharged to the Penobscot River through outfall number 001 pursuant to the 2011 Permit. During that time, Respondent has also maintained an emergency spill pond upstream of its treatment plant to capture untreated wastewater in the event that wastewater flow exceeds the treatment capacity of the primary and secondary clarifiers and aeration basin.

68. From at least March 2009 through the present, wastewater from a foul condensate line at the Facility received treatment via an aeration basin and two secondary clarifiers before being discharged to the Penobscot River through outfall number 001 pursuant to the 2011 Permit.

69. Section A(3) of the Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable to All Permits, revised July 1, 2002 (“MEPDES Standard Conditions”), which are incorporated into the 2011 Permit, requires Respondent to comply with all conditions of the permit.

70. Section B(2) of the MEPDES Standard Conditions requires Respondent to “at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit.”

71. During the Inspections, authorized representatives of the State of Maine and EPA observed cracking, cement spawling, and exposed rebar in the primary and secondary clarifiers at the Facility.

72. During the Inspections, authorized representatives of the State of Maine and EPA observed partially treated wastewater escaping through cracks in the primary and secondary

clarifiers.

73. During the Inspections, authorized representatives of EPA observed a buildup of solids at the entrance of the emergency spill pond. This buildup of solids limited the capacity of the emergency spill pond such that it would not have been able to capture untreated wastewater were the flow to exceed the treatment capacity of the primary and secondary clarifiers and aeration basin.

74. By failing to properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) installed or used to achieve compliance with the conditions of a permit, in violation of Section B(2) of the MEPDES Standard Conditions of the 2011 Permit, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), from at least June 28, 2011 to March 22, 2012.

**COUNT 3: FAILURE TO COMPLY WITH MEMSGP
(STORMWATER) PERMIT TERMS AND CONDITIONS**

75. Paragraphs 1 through 74 are incorporated herein by reference.

76. From at least March 2009 through the present, Respondent has discharged “storm water associated with industrial activities” within the meaning of 40 C.F.R. § 122.26, from outfall numbers SW1, SW2, SW3, SW4, SW5, and SW6 to the Penobscot River.

77. The release of stormwater associated with industrial activity from these point sources constitutes a “discharge of pollutants” within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

78. Since at least March 2009, Respondent was authorized under the 2005 MEMSGP and the 2011 MEMGSP to discharge stormwater to the Penobscot River. The 2005 MEMSGP and the 2011 MEMGSP contained a variety of terms and conditions designed to ensure the implementation of practices to reduce the pollutants in stormwater discharges associated with

industrial activity at the Facility.

79. Part II.A of the 2005 MEMSGP and Part III.A of the 2011 MEMSGP require Respondent to develop and implement a SWPPP for the Facility in accordance with requirements specified in the permit.

80. Among other things, a SWPPP must identify potential sources of pollution which could reasonably affect the quality of the stormwater discharges, and must describe and ensure implementation of practices to decrease pollutants in stormwater. *See* Part IV.A of the 2005 MEMSGP and Part V.A of the 2011 MEMSGP.

81. Part IV.F.4 of the 2005 MEMSGP and Part V.D.4 of the 2011 MEMSGP require that the SWPPP identify potential pollutant sources which may reasonably be expected to affect the quality of stormwater discharges associated with industrial activity from the Facility, including each separate area where industrial materials or activities are exposed, or have the potential to be exposed, to stormwater.

82. Respondent's SWPPP identifies, *inter alia*, the wood chip yard storage area and biomass fuel handling and storage area, which discharge to the Penobscot River at SW5, as "Potential Pollutant Sources."

83. Part IV.E of the 2005 MEMSGP and Part V.B of the 2011 MEMSGP require a permittee to select, design, install, and implement control measures (including Best Management Practices ("BMPs")) to address potential pollutant sources and any discharge(s) associated with industrial activity. Control measures must be evaluated in conjunction with monitoring to meet the terms and conditions of the MEMSGP. Respondent's SWPPP identifies the following BMPs, among others, in the "Best Management Practices" section:

- a. vegetative buffer strips maintained along the river bank to ensure material handling activities do not result in the discharge of contaminated runoff to the

river;

- b. the majority of the wood yard adjacent to the river is surrounded by a wooden wall to contain the chips and associated airborne fines in the wood yard;
- c. all conveyors of the biomass feeding the No. 6 Boiler are covered to contain fines while the fuel is conveyed to the boiler;
- d. frequent site housekeeping to ensure site cleanliness both inside and outside, including maintenance of stormwater drains and ditches by removing sediment as necessary; and
- e. regular yard sweeping, including periodic sweeping of wood fines along the roads adjacent to the wood yard, with an industrial yard sweeper.

84. Part IV.F.7.b.i of the 2005 MEMSGP and Part V.C.2 of the 2011 MEMSGP require a permittee to perform good housekeeping procedures, keep all exposed areas that are potential sources of pollutants clean and orderly, and implement at regular intervals measures such as sweeping impervious areas.

85. Part IV.F.7.b.i of the 2005 MEMSGP and Part V.C.3 of the 2011 MEMSGP require a permittee to regularly inspect, test, maintain, and repair all industrial equipment, systems, and BMPs to prevent situations that may result in releases of pollutants.

86. From at least August 2009 until December 2011, Respondent failed to fully implement its SWPPP by discharging stormwater associated with industrial activity to a “water of the United States” without implementing the BMPs described in its SWPPP related to the wood chip yard storage area and surrounding areas and/or by failing to repair or modify those BMPs to prevent releases of pollutants. In particular, Respondent failed to:

- a. repair gaps in the wooden wall surrounding the wood yard, cover the biomass fuel conveyor or lower the chute, or install a wood screen or curtain in order to contain wood chips and prevent associated airborne fines from reaching the river;
- b. remove sediments from stormwater drains and ditches in order to prevent pooling of stormwater in industrial areas; and

- c. implement a regular sweeping schedule to remove wood fines from the access roads between the wood chip yard and the Penobscot River.

87. Part IV.F.2.b of the 2005 MEMSGP and Part V.D.3 of the 2011 MEMSGP

require that a SWPPP must contain a site map with certain requisite components, including but not limited to:

- a. delineation of impervious surfaces;
- b. the locations of all existing structural BMPs to reduce pollutants in stormwater runoff; and
- c. the locations of the following activities where such activities are exposed to stormwater: fueling stations, vehicle and equipment maintenance and cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, and liquid storage tanks.

88. From at least April 2011 until March 2012, Respondent failed to properly prepare a SWPPP in accordance with the terms and conditions of the 2005 MEMSGP and the 2011 MEMSGP by failing to include adequate site maps that contained all required components. In particular, the site map contained in Respondent's SWPPP did not contain delineation of impervious surfaces, the locations of all existing structural BMPs, and the locations of fueling stations and liquid storage tanks exposed to precipitation.

89. Accordingly, Respondent failed to properly prepare and fully implement a SWPPP in violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and thus violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), from at least August 4, 2009 until March 12, 2012.

**COUNT 4: FAILURE TO MAINTAIN AND FULLY IMPLEMENT A
SPILL POLLUTION CONTROL AND COUNTERMEASURE PLAN**

90. Paragraphs 1 through 89 are incorporated herein by reference.

91. During the Inspections and based on additional information submitted by Respondent, EPA determined that Respondent had an SPCC Plan for the Facility, but the SPCC

Plan was deficient and Respondent neither maintained nor fully implemented the SPCC Plan, in violation of Section 311(j) of the Act.

92. Respondent 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 maintain and fully implement an SPCC plan, includes, but is not limited to the following deficiencies:

- a. Respondent failed to include in its SPCC plan a diagram identifying the location of each fixed oil storage container and the storage area where mobile or portable containers are located and a description of the type of oil in each fixed container and its storage capacity, as required by 40 C.F.R. § 112.7(a)(3);
- b. Respondent failed to provide appropriate secondary containment for oil storage containers in the "Atlas Silos" oil room and the "Crane Shed" storage building to prevent a discharge of oil as required by 40 C.F.R. § 112.7(c);
- c. Respondent failed to maintain the secondary containment area for bulk oil storage containers #17 and #18. The containment area was observed to have excessive overgrown weeds which inhibited the monthly visual inspections of the tanks, the containment area, and potential discharges required by the Facility's SPCC plan, in violation of 40 C.F.R. §§ 112.7(e), 112.8(c)(2), and 112.8(c)(6).

93. By failing to maintain and fully implement a 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 June 12, 2009 until March 12, 2012.

V. NOTICE OF PROPOSED ASSESSMENT OF CIVIL PENALTY

94. Based upon the foregoing allegations and pursuant to the authority of Sections 309(g) and 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. §§ 1319(g) and 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)), 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 after January 12, 2009, during which the violations continued, up to a maximum of one hundred and seventy-seven thousand five hundred dollars (\$177,500).

95. Based on the foregoing allegations, EPA seeks to assess civil penalties for each day of Count 1 (discharge of untreated wastewater), which was for a total of up to two (2) days, Count 2 (MEPDES permit violations), which was for a total of up to 269 days, Count 3 (stormwater permit violations), which was for a total of up to 951 days, and Count 4 (SPCC violations), which was for a total of up to 1,005 days, up to a maximum of one hundred and seventy-seven thousand five hundred dollars (\$177,500).

96. The MEPDES permit violations alleged in Count 1 above represent significant violations of the CWA because untreated and unmanaged wastewater from pulp mill operations may contain biological oxygen demand (“BOD”), total suspended solids (“TSS”), chemical oxygen demand (“COD”), and other toxic pollutants, which can have significant effects on water quality and the aquatic ecosystem, including but not limited to effects on oxygen demand, interference with photosynthesis, and disruption to the aquatic food chain.

97. The MEPDES permit violations alleged in Count 2 above represent significant violations of the CWA because of the extent and duration of the violations and because compliance with operations and maintenance requirements incorporated into NPDES permits is important to ensuring that deterioration of permitted facilities does not contribute to the

impairment of water quality.

98. The stormwater violations alleged in Count 3 above represent significant violations of the CWA because of the extent and duration of the violations and because compliance with the federal stormwater program is important to ensuring that stormwater runoff does not contribute to the impairment of water quality. Untreated and unmanaged stormwater from pulp mill operations may contain BOD, TSS, COD, and other toxic pollutants, which can have significant effects on water quality and the aquatic ecosystem, including but not limited to effects on oxygen demand, interference with photosynthesis, and disruption to the aquatic food chain.

99. The violations of the Oil Pollution Prevention regulations alleged in Count 4 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. There are almost one million gallons of oil storage capacity on the Facility, and if Respondent is not adequately prepared, a spill of this quantity of oil could have very significant environmental consequences.

100. 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

101. Pursuant to Sections 309(g) and 311(b)(6) of the Act, 33 U.S.C. §§ 1319(g) and 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 Sections 309(g)(4)(B) and 311(b)(6)(C) of the Act, 33 U.S.C. §§ 1319(g)(4)(B) and 1321(b)(6)(C), to comment on any proposed penalty and to be heard and to present evidence at the hearing.

102. 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.

103. 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 Laura J. Berry, the attorney assigned to represent EPA and designated to receive service in this matter at:

Laura J. Berry
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: OES04-2)
Boston, Massachusetts 02109-3912

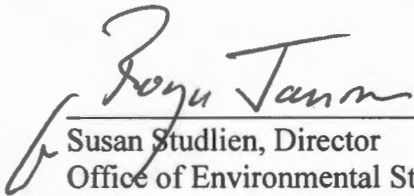
104. If Respondent fails to file a timely Answer to this Complaint, it may be found to

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.

105. 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

106. Neither assessment nor payment of a civil penalty pursuant to Sections 309(g) and 311(b)(6) of the CWA, 33 U.S.C. §§ 1319(g) and 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, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region 1 – New England

30 August 2012
Date

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

IN THE MATTER OF)	Docket No. CWA-01-2012-0075
)	
RED SHIELD ACQUISITION LLC)	
(d/b/a OLD TOWN FUEL & FIBER))	COMPLAINT AND NOTICE OF
24 Portland Street, P.O. Box 564)	OPPORTUNITY FOR HEARING
Old Town, ME 04468)	
)	
Respondent.)	
)	
Proposing to Assess a Civil Penalty Under)	
Sections 309(g) and 311(b)(6) of the Clean)	
Water Act, 33 U.S.C. §§ 1319(g), 1321(b)(6))	

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
copy of 40 C.F.R. Part 22:

Richard D. Arnold, President
Red Shield Acquisition LLC (dba Old Town Fuel & Fiber)
P.O. Box 564
Old Town, ME 04468

and

Red Shield Acquisition LLC (dba Old Town Fuel & Fiber)
c/o Corporation Service Company
2711 Centerville Road, Suite 400
Wilmington, DE 19808

Copy, by Certified Mail,
Return Receipt Requested:

Brian Kavanah, Director
Division of Water Quality Management
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

Dated: 8/31/12



Laura J. Berry
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (OES04-2)
Boston, MA 02109-3912
Tel (617) 918-1148
Fax (617) 918-0148



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

August 31, 2012

Brian Kavanah, Director
Division of Water Quality Management
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

Re: *In the Matter of Red Shield Acquisition LLC (dba
Old Town Fuel & Fiber), Docket No. CWA 01-2012-0075*

Dear Mr. Kavanah:

Enclosed please find a copy of an Administrative Complaint proposing to assess a civil penalty under Section 309(g) of the Clean Water Act against Red Shield Acquisition LLC (dba Old Town Fuel & Fiber) ("Red Shield") for unauthorized discharge of process wastewater; failure to comply with the terms and conditions of its Maine Pollutant Discharge Elimination System ("MEPDES") permit; failure to comply with the terms and conditions of the Maine Pollutant Discharge Elimination System Multi-Sector General Permit for Stormwater Discharge Associated with Industrial Activity ("MEMSGP"); and failure to maintain and fully implement a Spill Prevention, Control, and Countermeasure ("SPCC") Plan in accordance with the Oil Pollution Prevention regulations found at 40 C.F.R. Part 112.

We are initiating an administrative enforcement action seeking a civil penalty of up to \$177,500 for all counts in the Complaint.

Should you wish to consult further on this matter, please call me at (617) 918-1148.

Sincerely,

A handwritten signature in cursive script that reads "Laura J. Berry".

Laura J. Berry
Enforcement Counsel

Cc: Alex Rosenberg (EPA Region 1)
Clarissa Trasko (ME-DEP)
Wanda Santiago (Regional Hearing Clerk)
Richard D. Arnold (Red Shield Acquisition LLC)
CDR Cornell Rosiu (First Coast Guard District)

Enclosures

Toll Free • 1-888-372-7341

Internet Address (URL) • <http://www.epa.gov/region1>

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