



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 Congress Street, Suite 1100 (SEL)
Boston, MA 02114-2023

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March 4, 2009

Wanda Rivera
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 1
One Congress Street, Suite 1100 (RCA)
Boston, MA 02114-2023

BY HAND

Re: In the Matter of Atlantic Union College
Docket Nos. CWA-01-2009-0020; EPCRA-01-2009-0021

Dear Ms. Rivera:

Enclosed for filing in the above-referenced action, please find the original and one copy of an Administrative Complaint and Opportunity to Request a Hearing.

Thank you for your attention to this matter.

Sincerely,

Tonia Bandrowicz
Senior Enforcement Counsel

Enclosure

cc: Norman Wendth, President Atlantic Union College

In the Matter of Atlantic Union College
Docket Nos. CWA-01-2009-0020, EPCRA-01-2009-0021

CERTIFICATE OF SERVICE

I certify that the foregoing ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING was sent to the following persons, in the manner specified, on the date below:

Original and one copy
hand-delivered:

Wanda Rivera
Regional Hearing Clerk
U.S. EPA, Region 1
One Congress Street (RAA)
Boston, MA 02114-2023

Copy and a copy of the
Part 22 Rules by certified mail,
return receipt requested:

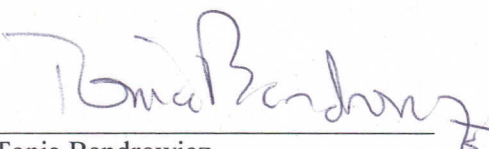
Norman Wendth, President
Atlantic Union College
338 Main Street
South Lancaster, MA 01561

Copy by certified mail:

Albe Simenas
MADEP – BWSC
One Winter Street
Boston, MA 02108

CDR Wayne Clayborne
First Coast Guard District
Captain John Foster Williams Building
408 Atlantic Avenue
Boston, MA 02210-2209

Dated: _____



Tonia Bandrowicz
Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (SEL)
Boston, MA 02114-2023
Tel: (617) 918-1734
Fax: (617) 918-0734
Email : Bandrowicz.Toni@epa.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

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IN THE MATTER OF:)
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ATLANTIC UNION COLLEGE)
338 Main Street)
South Lancaster, MA)
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Respondent.)
_____)

ADMINISTRATIVE COMPLAINT AND
NOTICE OF OPPORTUNITY TO REQUEST A
HEARING

OFFICE OF
REGIONAL HEARING CLERK

Proceeding to Assess Class II Civil Penalty Under
Sections 308 and 311 of the Clean Water Act and a
Civil Penalty under Section 312 of the Emergency
Planning and Community Right-to-Know Act

Docket Nos. CWA-01-2009-0020
EPCRA-01-2009-0021

I. STATUTORY AUTHORITY

1. This Administrative Complaint is issued under the authority vested in the U.S. Environmental Protection Agency (“EPA”) by Section 311(b)(6)(B)(ii) of the Clean Water Act (“CWA”), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and by Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11045(c) (also known as the Emergency Planning and Community Right-to-Know Act (“EPCRA”)). “Complainant” is the Director of the Office of Environmental Stewardship, EPA, Region 1.

2. Pursuant to Section 311(b)(6)(B)(ii) of the CWA, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation, Termination or Suspension of Permits,” codified at 40 C.F.R. Part 22 (“Part

22”), Complainant hereby provides notice of its proposal to assess a civil penalty against Atlantic Union College (“Respondent” or the “College”) for its:

- a. failure to comply with the Oil Pollution Prevention regulations set forth at 40 C.F.R. Part 112 in violation of Section 311(j) of the CWA, 33 U.S.C. § 1321(j);
- b. 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);
- c. failure to respond to an EPA issued information request within the required time frame for response, in violation of 308(a) of the CWA, 33 U.S.C. § 1318(a); and
- d. failure to file Tier II hazardous chemical inventory forms to the proper authorities, in violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20 and 370.25.

3. This Complaint also provides notice of Respondent’s opportunity to file an Answer to this Complaint and to request a hearing.

4. Section 311(j)(1) of the CWA, 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 . . . from onshore and offshore facilities, and to contain such discharges . . .”

5. Under the authority of Section 311(j)(1) of the CWA, the Oil Pollution Prevention regulations 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 that, 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).

6. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil or hazardous substances, into or upon the navigable waters of the United States or adjoining shorelines in such quantities as may be harmful, as determined under Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4).

7. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the Act, EPA has determined that an oil discharge “may be harmful” to the public health or welfare or the environment of the United States if it causes either: (1) a violation of applicable water quality standards; (2) a film or sheen upon, or discoloration of the surface of the water or adjoining shorelines; or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines (“harmful quantity”).

8. “Navigable waters” of the United States are defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), as “waters of the United States” and are further defined in its implementing regulations.

9. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes EPA to require the submission of information whenever necessary for the purpose of carrying out the objectives of the CWA.

10. Under Section 312(a) of EPCRA and 40 C.F.R. §§ 370.20 and 370.25, any facility which is required to prepare or have available a Material Safety Data Sheet (“MSDS”) for a hazardous chemical under the Occupational Safety and Health Act of 1970 (“OSHA”) must prepare and submit an emergency and hazardous chemical inventory form (Tier I or Tier II form or its state equivalent) to the Local Emergency Planning Committee (“LEPC”), the State Emergency

Response Commission (“SERC”), and the local fire department. The Tier I or Tier II form must be submitted annually on or before March 1 and is required to contain information with respect to the preceding calendar year.

II. GENERAL ALLEGATIONS

11. Respondent is an association and/or corporation operating a college in Massachusetts located at 338 Main Street, South Lancaster, Massachusetts; and, therefore, Respondent is a “person” within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7); Section 329(7) of EPCRA, 42 U.S.C. § 11049(7); and 40 C.F.R. §§ 112.2 and 370.2.

12. Respondent has owned and operated the College for at least five years and is the “owner or operator” within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of an “onshore facility.”

13. On August 7, 2008, a duly authorized representative of EPA conducted an inspection at the College to determine compliance with the requirements of Section 311 of the CWA and Section 312 of EPCRA. At the time of the inspection, Respondent was storing oil in multiple tanks located throughout the campus.

14. The Respondent’s belowground oil storage tanks include two 20,000 gallons tanks, one 10,000 gallon tank and one 5,000 gallon tank. The total belowground oil storage at the College was 55,000 gallons.

15. Respondent’s aboveground oil storage tanks include three 500 gallon tanks and one 275 gallon tank. The total aboveground oil storage at the College is 1,775 gallons.

16. The College's total oil storage capacity is 56,775 gallons.

17. Respondent is engaged in storing, using, and consuming "oil" or oil products located at the College within the meaning of 40 C.F.R. §§ 112.2 and 112.1(b).

18. The College 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, and is a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.2.

19. The College is a "non-transportation-related" facility within the meaning of 40 C.F.R. § 112.2 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

20. The College has a power house on campus which contains a 500 gallon oil storage tank. In the power house there are multiple drains which discharge directly into an unnamed brook. The unnamed brook flows into the Nashua River, which feeds into the Merrimack River, which flows into the Atlantic Ocean near Salisbury Beach State Park. Due to the fact that the power house has drains which discharge into the unnamed brook, the College could reasonably be expected to discharge oil into the unnamed brook and the downstream bodies of water and has in fact done so.

21. The unnamed brook, Nashua River, Merrimack River and the Atlantic Ocean are all "navigable waters of the United States" as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and in its implementing regulations and therefore are subject to the jurisdiction of Section 311 of the CWA.

22. Based on the allegations above, Respondent is the owner and operator of a non-transportation-related facility that was engaged in storing, using, and consuming oil or oil products that could reasonably be expected to discharge oil in harmful quantities to navigable waters of the United States, and is, therefore, subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112.

23. During calendar year 2007, Respondent stored or used oil, which is a hazardous chemical as defined in 40 CFR § 370.2, at the College.

24. Respondent was required to prepare or have available an MSDS for oil, a “hazardous chemical” under the Occupational Safety and Health Act of 1970, 15 U.S.C. § 651 *et seq.*, and the regulations promulgated thereunder at 29 C.F.R. § 1910.1200.

25. Pursuant to 40 C.F.R. § 370.20(b)(4), the minimum threshold level for Tier I or Tier II reporting for oil (as a “hazardous chemical”) at facilities that are not retail gas stations is 10,000 pounds.

26. During calendar year 2007, Respondent stored oil at the College in a quantity that exceeded 10,000 pounds.

27. Respondent was therefore subject to the reporting requirements of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20 and 370.25 for the calendar year 2007.

28. Accordingly, on or before March 1, 2008, Respondent was required to prepare and submit to the SERC, LEPC and the fire department with jurisdiction over the College, a Tier II form containing chemical information for calendar year 2007.

III. VIOLATIONS

Count I: Failure to Prepare and Implement an SPCC Plan in Violation of Section 311(j) of CWA

29. Under 40 C.F.R. § 112.3, the owner or operator of an SPCC-regulated facility in operation prior to August 16, 2002, shall have prepared and implemented an SPCC plan that is in accordance with the requirements of 40 C.F.R. § 112.7.¹

30. For at least five years prior to the filing of this Complaint, the College had not prepared or implemented an SPCC Plan, in violation of 40 C.F.R. § 112 and Section 311(j) of the CWA.

31. Respondent's failure to prepare and implement an SPCC plan for the College in accordance with the requirements of 40 C.F.R. § 112.7 violated 40 C.F.R. § 112.3 and Section 311(j) of the CWA. Respondent violated these requirements for each day for the period of violation, which was for a total of at least 1,826 days.²

32. Respondent is therefore subject to an assessment of penalties under Section 311(b)(6)(B)(ii) of the CWA as amended by 40 C.F.R. § 19.4, which authorizes EPA to assess a civil penalty of up to \$11,000 per day for each day during which the violations of Section 311 continue, up to a maximum of \$157,500, for violations occurring prior to January 12, 2009, and up to \$16,000 per day for each day during which the violations of Section 311 continue, up to a maximum of \$177,500, for violations occurring on or after January 12, 2009.

¹The preamble to the amended SPCC regulations for 40 CFR § 112.3(a) states that "the owner or operator of a facility in operation on the effective date of this rule who is required to have prepared or implemented an SPCC Plan, but has not, remains subject to civil penalties for a violation of current § 112.3 if the time has expired for preparation or implementation of his Plan." 67 FR 47042, 47083 (July 17, 2002)

²EPA is not pursuing penalties for violations of 40 C.F.R. Part 112 beyond the federal five year statute of limitations found at 28 U.S.C. § 2462. Five years equals 1,826 days of violation.

Count II: Illegal Discharge of Oil into Waters of the United States in Violation of Section 311(b)(3) of the CWA

33. The Complaint incorporates Paragraphs 1-32 above by reference.

34. On August 4, 2008 the power house tank at Respondent's College began leaking from the fuel line and spilled oil into the drains which discharge directly into the previously mentioned unnamed brook. A sheen was observed on the unnamed brook which flows into the Nashua River.

35. Respondent's discharge of oil into a navigable water of the United States, the unnamed brook, which flows into the Nashua River, in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, is a violation of Section 311(b)(3) of the CWA.

36. Respondent is therefore subject to an assessment of penalties under Section 311(b)(6)(B)(ii) of the CWA as amended by 40 C.F.R. § 19.4, which authorizes EPA to assess a civil penalty of up to \$11,000 per day for each day during which the violations of Section 311 continue, up to a maximum of \$157,500, for violations occurring prior to January 12, 2009, and up to \$16,000 per day for each day during which the violations of Section 311 continue, up to a maximum of \$177,500, for violations occurring on or after January 12, 2009.

Count III: Failure to Respond to a CWA 308(a) Information Request

37. The Complaint incorporates Paragraphs 1-36 above by reference.

38. Pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a), on September 17, 2008, EPA requested, in writing, that the Respondent submit information pertaining to its compliance with the Oil Pollution Prevention regulations at 40 C.F.R. § 112 at the College within 30 days of

receipt of the written request (the "Information Request"). The Respondent received the Information Request on September 22, 2008; therefore a response was due no later than October 22, 2008.

39. As of the date of this Complaint, the Respondent has failed to provide the requested information, in violation of Section 308 of the CWA, 33 U.S.C. § 1318.

40. Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), authorizes the EPA to assess administrative penalties for violations of Section 308 of the Act, 33 U.S.C. §1318.

41. Pursuant to Section 309(g)(2)(B) of the Act, as amended by 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$11,000 per day for each day during which the violations continue, up to a maximum of \$157,500, for violations occurring prior to January 12, 2009, and up to \$16,000 per day for each day during which the violations continue, up to a maximum of \$177,500.

Count IV: Failure to file Tier II Hazardous Chemical Inventory Forms to the Proper Authorities, in Violation of Section 312(a) of EPCRA

42. The Complaint incorporates Paragraphs 1-41 above by reference.

43. Based on the August 7, 2008 inspection and a review of documents collected during the inspection, EPA determined that Respondent did not submit a Tier II Emergency and Hazardous Chemical Inventory form to the LEPC, the SERC and the fire department with jurisdiction over the College for the calendar year 2007, in violation of the reporting requirement of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20 and 370.25.

44. Respondent's failure to prepare and submit a Tier II form for calendar year 2007 to the LEPC, the SERC, and the fire department with jurisdiction over the College, on or before the

reporting deadline of March 1, 2008, constitutes a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20 and 370.25.

45. Respondent is therefore subject to an assessment of penalties under Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1).

IV. PROPOSED PENALTY

Clean Water Act Penalty

46. Based on the forgoing Findings of Violation, and pursuant to the authority of Sections 309(g)(2)(B) and 311(b)(6)(B)(ii) of the CWA, as amended by 40 C.F.R. § 19.4, the Complainant proposes that a Final Order assessing administrative penalties be issued against Respondent in an amount not to exceed the amounts set forth above.

47. Pursuant to Section 311(b)(8) of the CWA, EPA calculates the proposed penalty taking into account the seriousness of the violations, the economic benefit to the violator, if any, 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.

48. When calculating the penalty under Section 309(g)(3), EPA takes into account the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and such other matters as justice may require.

49. Respondent's violations of the Oil Pollution Prevention regulations alleged above represent significant violations of the CWA because failure to fully prepare and implement an adequate SPCC plan leaves a facility unprepared to deal with an oil spill or to prevent the spill from having potentially serious environmental consequences.

50. Respondent's illegal discharge of oil into waters of the United States alleged above represents a significant violation of the CWA because the discharge of oil may adversely affect navigable waters, shorelines, vegetation, habitat for fish and wildlife, as well as provide a threat to human health and safety.

51. Respondent's failure to respond to the information request issued under Section 308 of the CWA represents a significant violation of the CWA because it seriously impedes the EPA's ability to assess the possible environmental impact of the College on the surrounding area.

EPCRA Penalty

52. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), 40 C.F.R. §§ 370.5(b) and 372.18, and 40 C.F.R. Part 19, provide that any person who violates any requirement of Section 312 after March 15, 2004 and on or before January 12, 2009 shall be liable to the United States for a civil penalty in an amount not to exceed \$32,500 per day for each violation. Failure to report in a timely manner, as required by Section 312, may deprive the community of its right to know about chemicals used or stored near or in the neighborhood that may affect public health and the environment, and may prevent comprehensive planning by federal, state and local authorities to properly prepare for accidental chemical releases.

53. The proposed civil penalty has been determined in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c). For purposes of determining the amount of any penalty to be assessed, EPA considered the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent, its ability to pay, prior history of violations, degree of culpability, economic benefit or savings resulting from the violation, and such other matters as justice may require.

V. OPPORTUNITY TO REQUEST HEARING

54. Respondent may, pursuant to 40 C.F.R. § 22.15(c), request a hearing on the proposed penalty assessment in its Answer to this Complaint. Even if Respondent does not explicitly request a hearing in their Answer, the Presiding Officer may hold such a hearing if the Answer raises issues appropriate for adjudication. The procedures for any such hearing and for all proceedings in this action are set out in 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint.

55. Default constitutes an admission of all facts alleged in this Complaint and a waiver of the right to a hearing on such factual allegations. In order to avoid default in this matter, Respondent must within 30 days after receipt of this Complaint either: (1) settle this matter with the Complainant; or (2) file both an original and one copy of a written Answer to this Complaint to:

Wanda Rivera
Regional Hearing Clerk (RAA)
U.S. Environmental Protection Agency-Region 1
One Congress Street, Suite 1100
Boston, Massachusetts 02114-2023

56. Respondent is also required to provide a contemporaneous copy of any Answer to Complainant's legal counsel, who is authorized to receive service on behalf of EPA pursuant to 40 C.F.R. § 22.5(c)(4), at the following address:

Toni Bandrowicz, Senior Enforcement Counsel
Office of Environmental Stewardship (SEL)
U.S. Environmental Protection Agency – Region 1
One Congress Street, Suite 1100
Boston, Massachusetts 02114-2023
Tel: 617-918-1734 Fax: 617-918-0734
Email: bandrowicz.toni@epa.gov

57. Pursuant to 40 C.F.R. § 22.15, the Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has knowledge. If the Answer asserts no knowledge of a particular factual allegation, the allegation shall be deemed denied. Otherwise, the failure to admit, deny, or explain any material factual allegation contained in this Complaint constitutes an admission of the allegation. The Answer shall also state the circumstances or arguments for any defense Respondent may wish to assert, challenges to any factual allegation in the Complaint, and any basis Respondent may have to oppose the Complainant's proposed penalty.

58. Following receipt of the Answer, a Presiding Officer will be assigned. The Presiding Officer will notify the parties of his assignment, and shall notify the parties of the time and place of further proceedings in the case.

VI. PUBLIC NOTICE FOR CLEAN WATER ACT VIOLATION

59. Pursuant to Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), the Complainant is providing public notice of, and reasonable opportunity to, comment on this

proposed issuance of a Final Order assessing administrative penalties against Respondent for CWA violations. If a hearing is held on this matter, members of the public who submitted timely comments on this proceeding have the right under Section 311(b)(6)(C) of the CWA to be heard and present evidence at the hearing.

VII. SETTLEMENT

60. You may request an informal conference with Complainant's attorney, Toni Bandrowicz, concerning the alleged violations and the amount of the proposed penalty. A request for an informal conference does not extend any deadlines in this proceeding, including the deadline by which you must submit an Answer to this Complaint.

61. If you have any questions concerning the enclosed Complaint, or wish to arrange for an informal conference, please contact Ms. Bandrowicz at (617) 918-1734.

Date: 02/03/09

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