

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

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IN THE MATTER OF:

PETROLEUM MARKETERS, INC.
d/b/a APB Whiting Oil Co.
1415 Eastern Road
Roanoke, VA 24013

Respondent.

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

Docket No. CWA-03-2008-0103

**COMPLAINANT'S RESPONSE TO PETROLEUM MARKETERS, INC.'S
MOTION TO DISMISS AND TO SUBSTITUTE RESPONDENT**

Pursuant to Rule 22.16(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, codified at 40 C.F.R. Part 22, the Complainant submits this response to the Motion to Dismiss and to Substitute Respondent filed by Petroleum Marketers, Inc..

I. Statement of Facts

On January 28, 2008, the Complainant filed an administrative Complaint against Petroleum Marketers, Inc. ("PMI") for various violations of the Oil Pollution Prevention Regulations, 40 C.F.R. Part 112, promulgated pursuant to Section 311(j) of the Clean Water Act, 33 U.S.C. § 1321(j), relating to the bulk oil storage facility known as the APB Whiting Oil Co. Facility at 1415 Eastern Avenue in Roanoke, Virginia (the "Facility").

On February 27, 2008, PMI responded to the Complaint with a Motion to dismiss the named respondent and to substitute PM Terminals, Inc., as the proper respondent party. In its Motion, PMI alleged that it is not the owner or operator of the Facility, but that the Facility is owned and operated by its wholly-owned subsidiary, PM Terminals, Inc.¹ PMI's Motion was not supported by any affidavits, or corroborating documents, such as a property deed. See Rule 22.16(a)(4) of the Consolidated Rules.

¹PM Terminals, Inc. filed a contemporaneous answer to the complaint.

II. Argument

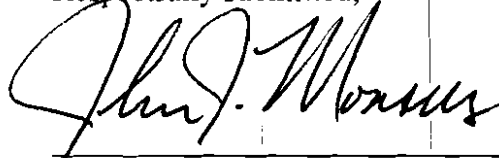
The Complainant opposes the dismissal of PMI at this time given the respondent's failure to produce any evidence demonstrating that the Facility is owned and operated by PM Terminals, Inc. The Complainant does not oppose the Motion to the extent it seeks to add PM Terminals, Inc. as a respondent party to this action.

At the time the Complaint was filed, the Complainant was in possession of a copy of the most recent Spill Prevention, Control and Countermeasure ("SPCC") Plan for the Facility dated August 2007. Excerpts of the SPCC Plan are attached as Exhibit 1. On page 2 of the SPCC Plan, PMI was expressly identified as the owner of the Facility. Exhibit 1. Moreover, the company which prepared the SPCC Plan, ECS Mid-Atlantic, LLC, submitted the completed Plan to PMI. Exhibit 1. Given this information, the Complainant reasonably concluded that PMI was the owner and operator of the Facility.²

III. Conclusion

Given the statement of ownership in the Facility's SPCC Plan, Complainant contends that PMI should not be dismissed as a respondent to this action until such time as it has produced evidence which conclusively demonstrates that it neither owns nor operates the Facility.

Respectfully submitted,



Dated: March 13, 2008

John J. Monsees
Senior Assistant Regional Counsel (3RC42)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Phone: (215) 814-2632
Fax: (215) 814-2603

²The SPCC Plan also suggests that PM Terminals, Inc. has some role in the operation of the Facility, as PM Terminals personnel are among those individuals identified as emergency contacts and responsible managers. Exhibit 1, at pp. i, iii, 2.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this date I served a true and correct copy of Complainant's Proof of Service to the following:

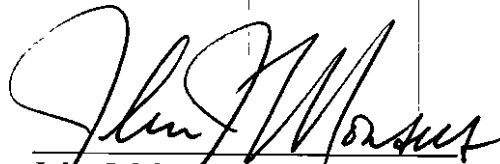
FILED VIA HAND DELIVERY

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

SERVED VIA FEDERAL EXPRESS

Michael S. Whitlow, Esq.
Whitlow & Youell, PLC
26 West Kirk Avenue
Roanoke, VA 24011

Dated: March 13, 2008



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

EXHIBIT 1



SPILL PREVENTION CONTROL AND COUNTERMEASURE PLAN

**APB WHITING OIL CO.
1415 EASTERN AVENUE
ROANOKE, VIRGINIA**

ECS PROJECT 3944

**PREPARED FOR
APB WHITING OIL CO.
ROANOKE, VIRGINIA**

AUGUST 1, 2007



ECS MID-ATLANTIC, LLC

Geotechnical • Construction Materials • Environmental • Facilities

August 1, 2007

Mr. Ernie Chenault
Petroleum Marketers, Inc.
3000 Ogden Road
Roanoke, Virginia 24014

ECS Project 3944

Reference: Spill Prevention Control and Countermeasure (SPCC) Plan
APB Whiting Oil Co.
1415 Eastern Avenue
Roanoke, Virginia

Dear Mr. Chenault:

ECS – Mid-Atlantic, LLC (ECS, LLC) is pleased to submit the enclosed Spill Prevention Control and Countermeasure (SPCC) Plan for the APB Whiting Oil Co. facility located at 1415 Eastern Avenue in Roanoke, Virginia. In order to comply with federal spill prevention requirements included in 40 CFR Part 112, the attached SPCC Plan is to be implemented at the facility.

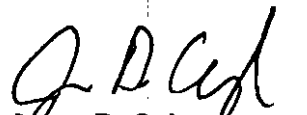
This SPCC Plan is certified contingent on the facility implementing the Plan herein. The appropriate facility personnel will need to sign the Management Approval section on page iii and the form in Appendix II. Please insert the emergency response contractor information in Appendix VII.

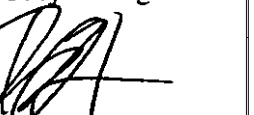
We appreciate the opportunity to provide our services to you. If there are questions regarding this report, or a need for further information, please contact us at (540) 362-2000.

Respectfully submitted,

ECS – MID-ATLANTIC, LLC


Liz Tashma
Project Engineer


James D. Oyler
Senior Project Manager


Brian S. Wyatt, P.E.
Principal Engineer

EMERGENCY PHONE NUMBERS

Name	Position	Office	Home/Cellular
Ernie Chenault	Program Manager	(540) 772-4900	(540) 586-2120 (434) 401-0666 (C)
Chris French	Branch Manager	(540) 774-4401	(540) 890-3748 (540) 598-9141 (C)
Jim Tolley	Facility Manager	(540) 774-4401	(540) 254-1481
Ron Lundy <i>Thomas Turner</i>	President PM Terminals	(540) 772-4900	(540) 989-9437 <i>540-389-2270</i> (540) 520-5726 (C) <i>540-520-1070</i>

LOCAL EMERGENCY NUMBERS (To be contacted by the Program Manager or Facility Manager, as needed)

Fire Department/Police Department/Emergency Medical Service: 911

Emergency Response Contractor: LCM Corporation (540) 344-5583 or 1-800-774-5583

Western Virginia Water Authority (WVWA) Water Pollution Control Plant (POTW): 853-2491 and Pretreatment 853-1571 7:30 a.m. to 4:30 p.m.; 537-4351/after hours

City of Roanoke Environmental Emergency Management: 853-2425

American Electric Power (for pole-mounted transformers): Emergency - 888-237-2221
 Call Center - 800-956-4237

STATE & FEDERAL NOTIFICATIONS (To be contacted by the Program Manager, as necessary)

Spill Notification:

Virginia Department of Emergency Management
 (for VDEQ after hours) (800) 468-8892
 (Richmond, Virginia)

VDEQ West Central Regional Office: (540) 562-6700
 (Roanoke, Virginia)

EPA National Response Center (NRC)/
 U.S. Coast Guard: (800) 424-8802

If a "navigable waterway" has been polluted or it is imminent that it may be polluted or if any "reportable quantity" under SARA Section 302 or 304 is released.

U.S. EPA Region III: (800) 438-2474
 If 1,000 gallons or more are released or any release reaching a "navigable waterway".

SPILL RESPONSE
APB Whiting Oil Co. – Eastern Avenue
Roanoke, Virginia

1. For small spills, utilize spill equipment or absorbent material to clean up oil. Contain debris in drums or other appropriate container. Notify the Program Manager. The Program Manager will be responsible for disposing of all contaminated materials in accordance with applicable laws and regulations.
2. For larger spills, immediately notify the Facility Manager or Facility Supervisor, who will determine if the spill can be handled safely by facility personnel, or if necessary will mobilize the Emergency Response Contractor. The Program Manager will make appropriate regulatory notifications.
3. Only respond to spills that are small enough to handle safely, and only respond to spill of substances with which you work or have familiarity. Identify the character, exact source and amount of any released materials by observation or review of facility records or manifests.
4. If the release is within a tank dike, make observation of piping, hoses, pumps, and tank level gauges to determine the source. Determine if the release is continuing or if it was the result of an overflow, limited spill, or a leak that was stopped by closing valves at the tank. If the release is in an area of drums, totes or other containers, remove and isolate the containers as necessary to determine which container(s) is/are leaking.
5. Take all reasonable measures necessary to avoid fires, explosions, and further releases. These measures shall include, when applicable, stopping manufacturing processes and operations, collecting and containing released petroleum, and removing or isolating problem containers. Evacuate the area if necessary. Monitor the affected equipment and areas for leaks, pressure buildups, gas generation, or ruptures in valves, pipes or other equipment, wherever appropriate.
6. **If the spill cannot be handled safely or contained, if surface waters are threatened, if there are injuries or the potential for injuries, if there is fire or the potential for fires, or if the release could endanger the public outside of the facility, call the Fire Department (Dial 911) immediately. Evacuate the site immediately. Provide Fire Department with the following information:**
 - Caller's name and the site location
 - Any injuries
 - Product involved and approximate volume
 - Flow stopped or continuing
 - Danger to potential conduits (drains, sewers, ditches, surface water)
 - Potential for fire
5. **Stop the source of the spill, if possible.** The primary concerns are to minimize the impacted area and to prevent oil from entering the environment. If the spill is within a spill containment structure, the structure drain outlet shall be checked to assure that it is closed.
6. Initiate necessary spill containment using available spill control equipment (**Located in the facility office**). The entrance to the drainage ditch and drainage culvert along Eastern Avenue shall be blocked with absorbent booms. The drainage outfall at Tinker Creek shall be monitored and blocked with absorbent booms if necessary. Use available pumps and trucks to remove product from the containment areas.
7. Initiate notification procedures in Section 7.5. If warranted, notify police, fire department, and/or hospital of incident and possible injury(ies) (Dial 911).
8. Document spill, response and notification (Appendix VIII of this SPCC Plan). Take detailed notes including names, dates and times. Take photographs.

DISCLOSURE STATEMENT

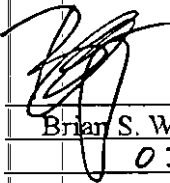
This Spill Prevention Control and Countermeasure (SPCC) Plan was prepared on behalf of and for the exclusive use of APB Whiting Oil Co.. This Plan pertains to the specific storage of oil at the APB Whiting Oil Co. facility located at 1415 Eastern Avenue in Roanoke, Virginia and should not be relied upon for the storage of fuels or liquids at any other facility.

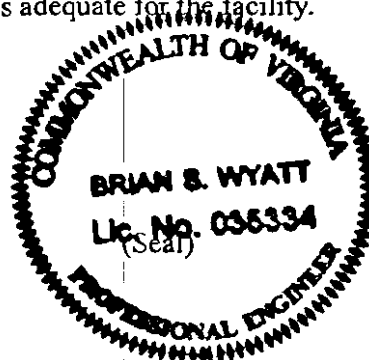
This SPCC Plan shall not be reproduced in whole or in part without permission of ECS - Mid-Atlantic, LLC. The Plan may be reproduced for internal use by APB Whiting Oil Co. and at the referenced facility.

CERTIFICATION

40 CFR 112.3(d)

ECS - Mid-Atlantic, LLC (ECS) hereby attests that the provisions of 40 CFR, Part 112 are understood, the facility discussed herein has been examined, that this SPCC Plan has been prepared in accordance with good engineering practices including consideration of applicable industry standards, that procedures for required inspections and testing have been established, and that the Plan is adequate for the facility.

P.E. Signature 
P.E. Name Brian S. Wyatt
Registration # 03533
State VA Date 8/1/07

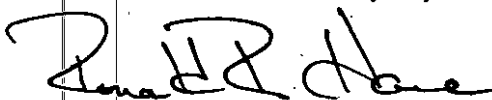


This certification in no way relieves the owner or operator of the facility of their duty to fully implement this Plan in accordance with the regulations. This Plan is valid only to the extent that the facility owner or operator maintains, tests, and inspects equipment, containment, and other devices as prescribed in this Plan.

MANAGEMENT APPROVAL

40 CFR 112.7

This SPCC Plan has the full approval of management and the necessary resources to implement the Plan will be made available. This Plan will be fully implemented as herein described.


Mr. Ronald R. Hare 10/2/2007
Mr. Ron Lundy, President PM Terminals Date

1.2 AVAILABILITY AND SUBMITTAL (40 CFR 112.3(e))

The Plan will be kept in the Facility Manager's office. The SPCC Plan shall be easily accessed in case of an emergency. The facility is required to keep the Plan, with all appropriate records, addendums and appendices, on file at the site and it must be available on-site during normal working hours for review by the EPA Regional Administrator.

1.3 PLAN REVIEW (40 CFR 112.5(b))

The Plan shall be reviewed at least every five (5) years to assess if Plan amendments are required. The reviewer must document the review and sign a statement to the need for amending the Plan (refer to Appendix III). The Plan must be recertified by the Professional Engineer if any technical amendments are made, as may be required if facility modifications are made or if a release occurs.

2.0 FACILITY INFORMATION

2.1 GENERAL FACILITY DESCRIPTION (40 CFR 112.7(a)(3))

2.1.1 Facility Information and Personnel

Facility Name: APB Whiting Oil Co.
 Facility Address: 1415 Eastern Avenue
 Roanoke, Virginia
 Telephone: (540)774-4401 Facsimile: (540) 774-9172 (ABP Whiting Starkey Road office)

Owner Information (if different than above):
 Owner Name Petroleum Marketers, Inc.
 Owner Address 3000 Ogden Road
 Roanoke, Virginia 24014
 Telephone Number (540) 772-4900

The facility personnel responsible for oil spill prevention and implementation of the SPCC Plan are as follows (40 CFR 112.7(f)(2)):

Name and Position	Phone Number	Responsibility
Ron Lundy President PM Terminals Ron R. Hare President AM Terminals.	(540) 772-4900	Commitment of corporate resources to implement the Plan
Ernie Chenault Program Manager Thomas W. Turner Program Manager.	(540) 772-4900	Overall implementation Notifications Compliance during containment and cleanup Tracking corrective actions and Plan revisions