



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

5 Post Office Square, Suite 100
Boston, MA 02109-3912

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May 29, 2012

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

BY HAND

Re: *In the Matter of The Miller Company, Inc.*
Docket No. CWA-01-2012-0002

Dear Ms. Santiago:

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,

Maximilian Boal
Enforcement Counsel

Enclosure

cc: Charles McCowen, Vice President of Operations, The Miller Company, Inc.
Diane C. Bellantoni, Esq., Murtha Cullina LLP

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

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2012 MAY 29 P 2:49

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IN THE MATTER OF:

**ADMINISTRATIVE COMPLAINT AND
NOTICE OF OPPORTUNITY TO REQUEST A
HEARING**

The Miller Company, Inc.
275 Pratt Street
Meriden, CT 06450

Proceeding to Assess Class II Civil Penalty Under
Clean Water Act Section 311 for SPCC and Oil
Spill Violations

Respondent.

Docket No. CWA-01-2012-0002

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" or "Act"), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990. "Complainant" is the Director of the Office of Environmental Stewardship, EPA, Region 1.

2. Pursuant to CWA Section 311(b)(6)(B)(ii), 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 The Miller Company, Inc. ("Respondent") for its failure to comply with the Oil Pollution Prevention regulations set forth at 40 C.F.R. Part 112, promulgated under the authority of CWA § 311(j), 33 U.S.C. § 1321(j), and other provisions of the CWA, 33 U.S.C. §§ 1251 *et seq.*, and for its

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 CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3). This Complaint also provides notice of Respondent's opportunity to file an Answer to this Complaint and to request a hearing on the proposed penalty.

3. Pursuant to CWA § 311(j)(1), 33 U.S.C. § 1321(j)(1), EPA promulgated the Oil Pollution Prevention regulations, at 40 C.F.R. Part 112, which establish procedures, methods, and requirements for preventing the discharge of oil.

4. Pursuant to 40 C.F.R. § 112.1(b), the requirements of 40 C.F.R. Part 112 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 to navigable waters of the United States or adjoining shorelines.

5. Pursuant to 40 C.F.R. § 112.3, the owner or operator of an onshore facility that became operational prior to August 16, 2002, 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 shall have maintained and implemented a Spill Prevention Control and Countermeasure ("SPCC") Plan in accordance with 40 C.F.R. § 112.7.

6. Pursuant to CWA § 311(b)(3), 33 U.S.C. § 1321(b)(3), the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities as may be harmful is prohibited.

7. Pursuant to CWA § 311(a)(2), 33 U.S.C. § 1321(a)(2), "discharge" includes but is

not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping, with some limited exceptions. "Discharge" is further defined at 40 C.F.R. § 112.2.

8. Pursuant to CWA § 311(a)(1), 33 U.S.C. § 1321(a)1, "oil" is defined as "oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil." Pursuant to 40 C.F.R. § 112.2, "oil" is further defined as "oil of any kind or in any form, including, but not limited to: fats, oils, or greases of animal, fish, or marine mammal origin; vegetable oils, including oils from seeds, nuts, fruits, or kernels; and other oils and greases, including petroleum, fuel oil, sludge, synthetic oils, mineral oils, oil refuse, or oil mixed with wastes other than dredged spoil."

9. Pursuant to CWA § 502(7), 33 U.S.C. § 1362(7), "navigable waters" of the United States are defined as "waters of the United States, including the territorial seas." "Navigable waters" are further defined by 40 C.F.R. § 110.1 and by 40 C.F.R. § 112.2.

10. Pursuant to CWA § 311(b)(4), 33 U.S.C. § 1321(b)(4), EPA promulgated regulations at 40 C.F.R. Part 110 to determine those quantities of oil the discharge of which may be harmful to the public health or welfare or the environment of the United States.

11. Pursuant to 40 C.F.R. § 110.3, for the purposes of CWA § 311(b)(4), discharges of oil in such quantities that EPA has determined "may be harmful to the public health or welfare or the environment of the United States include discharges of oil that: (a) Violate applicable water quality standards; or (b) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines."

II. GENERAL ALLEGATIONS

12. Respondent is a corporation organized under the laws of the state of Connecticut, and therefore is a “person” within the meaning of CWA § 311(a)(7), 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

13. Respondent is the “owner or operator” within the meaning of CWA § 311(a)(6), 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of a manufacturing facility located at 275 Pratt Street, Meriden, Connecticut 06450 (the “Facility”).

14. Respondent stores oil at the Facility in a variety of locations, with a total oil storage capacity that is greater than approximately 50,000 gallons.

15. At all times referenced in this Complaint, the Facility has an aggregate aboveground oil storage capacity greater than 1,320 gallons.

16. Respondent’s corporate predecessor, Joel Miller and Son, began operating at the Facility in 1844.

17. In 2000, Respondent’s corporate predecessor, The Miller Company, sold its assets and name to Duerer Corporation, which changed its name to The Miller Company, Inc. (“the Respondent”).

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

19. The Facility is an “onshore facility” within the meaning of CWA § 311(a)(10), 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

20. The Facility 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.

21. Respondent stores waste oil and/or used oil in two 10,000-gallon aboveground storage tanks (“Tank #1” and “Tank #2”), which are located outside at the southern end of the Facility.

22. Tank #1 and Tank #2 are located inside a secondary containment basin that can hold approximately 22,000-gallons.

23. A green PVC storm drain pipe runs through the secondary containment wall around Tank #1 and Tank #2, then into the floor, and then into a floor drain in a sprinkler utility room at the Facility.

24. The Jordan Brook Channel flows under the Facility and under Center Street on the western side of the Facility.

25. The floor drain in the Facility’s sprinkler utility room flows into the Jordan Brook Channel.

26. The floor drain in the Facility’s sprinkler utility room connects to a storm drain at Center Street on the western side of the Facility.

27. The storm drain at Center Street discharges to Harbor Brook.

28. In a June 10, 2011 report submitted by Respondent to EPA, Respondent wrote that, “Any discharge from The Miller Company would enter the former Jordan Brook Channel which flows to the Jordan Brook, which flows to Harbor Brook, which flows into Hanover Pond.”

29. The Jordan Brook Channel flows to Jordan Brook, which flows to Harbor Brook,

which flows into Hanover Pond. The Quinnipiac River flows from Hanover Pond, and it flows into New Haven Harbor, which opens into the Long Island Sound, which opens into the Atlantic Ocean.

30. Jordan Brook, Harbor Brook, Hanover Pond, the Quinnipiac River, New Haven Harbor, the Long Island Sound, and the Atlantic Ocean are “navigable waters of the United States” and are subject to the jurisdiction of CWA § 311, 33 U.S.C. § 1321, as defined in CWA § 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

31. Due to the location of the Facility, as well as the topography of the area, the Facility could reasonably be expected to discharge oil into “waters of the United States.”

32. Based on the allegations in paragraphs 12 through 31 above, Respondent is the owner and operator of a non-transportation-related facility 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.

33. On or about 10:30 A.M. on December 21, 2010, a resident of Meriden notified the Connecticut Department of Environmental Protection (“CTDEP”) of an oil sheen in Harbor Brook.

34. On or about 11:30 A.M. on December 21, 2010, CTDEP observed an oil sheen in Harbor Brook and began an investigation.

35. During CTDEP’s December 21, 2010 investigation, CTDEP traced the oil sheen in Harbor Brook to a storm drain located on Center Street near the Facility.

36. Harbor Brook is located approximately 1.25 miles from the Facility.
37. On December 21, 2010, Respondent inspected Harbor Brook and observed an oil sheen on the water.
38. Respondent did not report an oil spill to the National Response Center or any other agency on December 21, 2010.
39. Respondent inspected the Facility on or about December 21, 2010.
40. During Respondent's December 21, 2010 inspection of the Facility, Respondent observed that the outside of Tank #1 was wet.
41. During Respondent's December 21, 2010 inspection of the Facility, Respondent determined that the high level alarm for Tank #1 malfunctioned.
42. During Respondent's December 21, 2010 inspection of the Facility, Respondent determined that Tank #1 had overfilled.
43. During Respondent's December 21, 2010 inspection of the Facility, Respondent observed a crack in the connection between a green PVC storm drain pipe and the secondary containment area wall, which was around Tank #1 and Tank #2.
44. On December 23, 2010, A & C Connection Inspection investigated the Facility's storm drain system.
45. The December 23, 2010 inspection confirmed that the green PVC storm drain pipe ran through the secondary containment area wall around Tank #1 and Tank #2, then into the floor, and then into a floor drain located in a nearby sprinkler utility room in the Facility.
46. On December 27, 2010, Respondent conducted a dye test which demonstrated that

the floor drain in the Facility's sprinkler utility room was connected to the Center Street storm drain.

47. On or about January 6, 2011, EPA performed an inspection of the Facility to determine Respondent's compliance with CWA § 311(j), 33 U.S.C. § 1321, and 40 C.F.R. Part 112.

48. In a letter dated April 6, 2011, EPA sent a written request for information to Respondent pursuant to CWA §§ 308 and 311(m), 33 U.S.C. §§ 1318 and 1321(m).

49. In a written report dated June 10, 2011, Respondent answered EPA's request for information.

III. VIOLATIONS

COUNT I: Failure to Maintain and Implement an SPCC Plan

50. Complainant re-alleges Paragraphs 1 through 49.

51. Pursuant to 40 C.F.R. § 112.3, the owner or operator of an SPCC-regulated facility in operation prior to August 16, 2002, shall have maintained and implemented an SPCC Plan that is in accordance with the requirements of 40 C.F.R. § 112.7.

52. Respondent is the owner or operator of the Facility, which is an SPCC-regulated facility in operation prior to August 16, 2002.

53. The Facility is subject to the requirements of 40 C.F.R. Part 112, and is therefore required to maintain and implement an SPCC Plan in accordance with 40 C.F.R. Part 112.7.

54. Pursuant to 40 C.F.R. § 112.8, the owner or operator of an onshore facility must meet additional requirements when it maintains and implements its SPCC Plan.

55. The Facility is an “onshore facility” within the meaning of CWA § 311(a)(10), 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2, and therefore, Respondent was required to meet additional SPCC Plan requirements in accordance with 40 C.F.R. § 112.8.

56. Pursuant to 40 C.F.R. §§ 112.7 and 112.8, the owner or operator of an onshore facility must maintain and implement an SPCC Plan that meets requirements including, but not limited to: engineer or update each container installation in accordance with good engineering practice to avoid discharges, such as a high liquid level alarm; test each aboveground container for integrity on a regular schedule; design and implement facility drainage systems from undiked areas with a potential for discharge (such as where piping is located outside containment walls) to flow into ponds, lagoons, or catchment basins designed to retain oil or return it to the facility; ensure that diked areas are sufficiently impervious to contain discharged oil; provide adequate security; include an explanation or justification for the specifics of the facility’s secondary containment systems; and provide secondary containment of sufficient size.

57. During EPA’s January 6, 2011 inspection of the Facility and over the course of subsequent communications with Respondent, EPA determined that the Facility had neither maintained nor fully implemented an SPCC Plan, in violation of CWA § 311(j), 33 U.S.C. § 1321, and 40 C.F.R. Part 112. 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

58. Respondent’s failure to maintain and fully implement an SPCC Plan in accordance

with the requirements of 40 C.F.R. §§ 112.7 and 112.8 includes, but is not limited to, the following deficiencies:

- a. Tank #1 and Tank #2 did not have functioning high liquid level alarms or procedures for maintaining and testing these alarms;
- b. Respondent did not develop procedures for testing the integrity of the oil storage tanks at the Facility;
- c. Respondent did not ensure that containment structures were capable of preventing the discharge of oil;
- d. Respondent did not provide adequate security at the Facility;
- e. Respondent's SPCC Plan for the Facility did not adequately explain or justify the specifics of the Facility's secondary containment systems;
- f. Respondent's inspection procedures and requirements for aboveground oil operations at the Facility were deficient; and
- g. Respondent did not provide secondary containment of sufficient size for its indoor oil storage areas.

59. Respondent's failure to maintain and 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, violated 40 C.F.R. § 112.3.

60. Respondent violated these requirements for each day for the period of violation, which was for a total of at least 1,826 days.¹

¹ EPA is not pursuing penalties for violations of 40 C.F.R. Part 112 beyond the federal five year statute of

COUNT II: Illegal Discharge of Oil into Waters of the United States

61. Complainant re-alleges Paragraphs 1 through 60.

62. Pursuant to CWA § 311(b)(3), 33 U.S.C. § 1321(b)(3), the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities as may be harmful is prohibited.

63. On December 21, 2010, up to 40 gallons of oil were discharged from the Facility to the Jordan Brook Channel when the used oil in Tank #1 overflowed and flowed into the cracked green PVC pipe that runs through the secondary containment around Tank #1 and eventually discharges into a floor drain, which flows into the Jordan Brook Channel.

64. As described above, the Jordan Brook Channel flows to Jordan Brook, which flows to Harbor Brook, which is a navigable water of the United States as defined by CWA § 502(7), 33 U.S.C. § 1362(7), by 40 C.F.R. § 110.1, and by 40 C.F.R. § 112.2..

65. As described above, on December 21, 2010 an oil sheen was observed on Harbor Brook.

66. Accordingly, Respondent discharged oil from the Facility into or upon navigable waters of the United States in a quantity that has been determined harmful under 40 C.F.R. § 110.3, in violation of CWA § 311(b)(3), 33 U.S.C. § 1321(b)(3).

IV. PROPOSED PENALTY

67. Based on the forgoing Findings of Violation, and pursuant to the authority of CWA § 311(b)(6)(B)(ii), and 40 C.F.R. § 19.4, and CWA § 311(b)(8), the Complainant proposes

limitations found at 28 U.S.C. § 2462. Five years equals 1,826 days of violation.

that a Final Order assessing administrative penalties be issued against Respondent in an amount not to exceed \$11,000 per day for each day during which its violations continued, up to a maximum of \$157,500, for violations occurring between March 15, 2004 and January 12, 2009, and \$16,000 per day for each day during which violations continued, up to a maximum of \$177,500, for violations occurring after January 12, 2009, 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.

68. Respondent's violations of the Oil Pollution Prevention regulations alleged above represent significant violations of the Clean Water Act because failure to fully maintain 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.

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

V. OPPORTUNITY TO REQUEST HEARING

70. Respondent may, pursuant to CWA § 311(b)(6), 33 U.S.C. § 1321(b)(6), and 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 its 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.

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

Respondent is also required to provide a contemporaneous copy of any Answer to Complainant's 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:

Maximilian Boal, Enforcement Counsel
U.S. Environmental Protection Agency – Region 1
5 Post Office Square, Suite 100
Mail Code: OES04-2
Boston, MA 02109-3912

72. 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 wishes to assert, challenges to any factual allegation in the Complaint, and any basis Respondent may have to oppose the Complainant's proposed penalty.

73. 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

74. Pursuant to CWA § 311(b)(6)(C), 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. If a hearing is held on this matter, members of the public who submitted timely comments on this proceeding have the right under CWA § 311(b)(6)(C) to be heard and present evidence at the hearing.

VII. SETTLEMENT

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

76. If you have any questions concerning the enclosed Consent Agreement or the settlement process, or wish to arrange for an informal conference, please contact Maximilian

Boal at (617) 918-1750.

Date: 05/25/12

Susan Studlien

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

_____))
In the Matter of:))
))
The Miller Company, Inc.))
275 Pratt Street))
Meriden, CT 06450))
))
Respondent.))
_____)

Docket No. CWA-01-2012-0002
CERTIFICATE OF SERVICE

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

Original and One Copy
(Hand-Delivered):

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

Copy and copy of 40 C.F.R.
Part 22 Rules
(Certified Mail, Return Receipt
Requested):

Charles McCowen, Vice President of Operations
275 Pratt Street
Meriden, CT 06450

Diane C. Bellantoni, Esq.
Murtha Cullina, LLP
City Place I
185 Asylum Street
29th Floor
Hartford, CT 06103

Dated: 5-29-2012



Maximilian Boal
Enforcement Counsel
U.S. EPA, Region I
5 Post Office Square, Suite 100 (OES04-2)
Boston, Massachusetts 02109-3912