



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

CERTIFIED MAIL # 7001 0320 0004 5645 7563
RETURN RECEIPT REQUESTED

Mr. David Landau, Owner
126 LLC
1225 39th Street
Brooklyn, New York 11218

RE: Notice of Proposed Assessment of a Civil Penalty
Docket No. CWA-02-2011-3809
126 LLC, 126 Passaic Street, Newark, New Jersey 07104

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2011 OCT 13 P 3 29
REGIONAL HEARING
CLERK

Dear Mr. Landau:

Enclosed is a document entitled "Administrative Complaint and Opportunity to Request Hearing and Conference", hereinafter referred to as the "Complaint". This Complaint has been issued against 126 LLC ("Respondent"), under the authority of Section 311(b)(6) of the Clean Water Act ("Act"), 33 U.S.C. §1321(b)(6). In the Complaint, the United States Environmental Protection Agency ("EPA") alleges that the Respondent's facility located at 126 Passaic Street, Newark, New Jersey, has violated the Act. The alleged violations are specifically set out under "Specific Claims" in the Complaint. The amount of the civil penalty proposed to be assessed is \$172,400.

For purposes of determining the amount of any penalty to be assessed, Section 311(b)(8) of the Act requires EPA to take into account the following factors: the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the economic impact of the penalty on the violator, and any other matters as justice may require. To determine the penalty proposed in the Complaint, EPA has taken into account the statutory factors with respect to the particular facts and circumstances of this case, to the extent known at this time.

By law, the Respondent has the right to request a hearing regarding the violations alleged in the Complaint and the proposed civil penalty. A request for a hearing must be contained in a written Answer to the Complaint. In accordance with 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; Final Rule, 40 CFR Part 22 (copy enclosed), the Respondent must file a written Answer with the Regional Hearing Clerk within thirty (30) days of receipt of this Complaint if the Respondent contests any material fact upon which the Complaint is based, contends that the proposed penalty is inappropriate or contends that it is entitled to judgment as a matter of law. If the Respondent does not file a timely Answer in accordance with the requirements specified in the Consolidated Rules, the Respondent may be found in default and the proposed civil penalty may be assessed without further proceedings. The Respondent has the right to be represented by an attorney, or to represent itself at any stage of these proceedings.

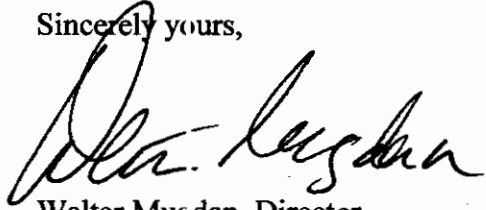
EPA encourages all parties against whom it files a Complaint to pursue settlement discussions with the Agency. Whether or not the Respondent requests a formal hearing, the Respondent may request an informal conference with EPA to discuss the alleged violations and the proposed civil penalty. Specifically, EPA invites information pertaining to the factors in Section 311(b)(8) of the Act. The penalty may be adjusted if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty. The Respondent may represent itself or be represented by an attorney at any conference, whether in person or by telephone. An attorney from the EPA's Office of Regional Counsel (ORC) will normally be present at any informal conference. Please be advised that any informal conferences conducted in person with EPA officials will be held in EPA Region 2's offices in either New York City or in Edison, New Jersey. Please also be advised that a request for an informal conference does not substitute for a written Answer, nor does it extend the period of time (thirty days) within which you must file an Answer and request a hearing.

If a mutually satisfactory settlement can be reached, it will be formalized by the issuance of a Consent Agreement signed by you and a Final Order signed by the Regional Administrator, EPA Region 2. The issuance of such a Consent Agreement and Final Order shall constitute a waiver by the Respondent of its right to a hearing on, and to a judicial appeal of, the agreed upon civil penalty. If you have any questions or wish to discuss the possibility of settlement of this matter, please contact:

Tim Murphy, Esq.
U.S. Environmental Protection Agency
290 Broadway - 16th Floor
New York, New York 10007-1866
Telephone: (2 2) 637-3236

We urge your prompt attention to this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Walter Mugdan". The signature is written in a cursive style with a large initial "W".

Walter Mugdan, Director
Emergency and Remedial Response Division

Enclosures

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

126 LLC
126 Passaic Street
Newark, New Jersey 07104

Respondent

Proceeding Pursuant to §311(b)(6) of the
Clean Water Act, 33 U.S.C. §1321(b)(6), for
SPCC Violations

Proceeding to Assess Class II Civil
Penalty Under Section 311(b)(6) of
the Clean Water Act

Docket No. CWA-02-2011-3809

**U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2011 OCT 13 P 3 29
REGIONAL HEARING
CLERK**

**COMPLAINT
FINDINGS OF VIOLATION, NOTICE OF PROPOSED
ASSESSMENT OF A CIVIL PENALTY, AND
NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

I. Statutory Authority

1. This Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing ("Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b) (6) (B) (i) of the Clean Water Act ("Act"), 33 U.S.C. §1321(b) (6) (B) (i). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Emergency and Remedial Response Division ("ERRD") of EPA, Region 2 ("Complainant").
2. Pursuant to Section 311(b) (6) (B)(ii) of the Act, and in accordance with 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" ("CROP"), codified at 40 CFR Part 22 ("Part 22"), a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against 126 LLC, Newark, New Jersey ("Respondent") for its failure or refusal to comply with the Spill Prevention Control and Countermeasure ("SPCC") regulations to which Respondent is subject at its facility located at 126 Passaic Street, Newark, New Jersey, as set forth at 40 CFR Part 112 under the authority of Section 311(j) and

other provisions of the Clean Water Act, 33 U.S.C. [§ 1321(j)][§§ 1251 et seq.], and notice of Respondent's opportunity to file an Answer to this Complaint and to request a hearing on the proposed penalty assessment.

II. Findings of Violation

JURISDICTIONAL ALLEGATIONS

1. The Respondent is a privately-owned business organized under the laws of the state of New Jersey, with a place of business located at 126 Passaic Street, Newark, New Jersey 07104. The Respondent is a person within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. §1321(a)(7) and 40 CFR §112.2.

2. The Respondent is the "owner and operator", within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. §1321(a)(6), and 40 CFR §112.2, of a bulk oil storage facility, located at 126 Passaic Street, Newark, New Jersey 07104, the Respondent's premise (hereinafter collectively referred to as "Facility").

3. The Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products located at the Facility.

4. The Facility has an aggregate aboveground storage capacity of greater than 1320 gallons of oil in containers each with a shell capacity of at least 55 gallons.

5. The Facility is an "onshore facility" within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. §1321(a)(10), and 40 CFR 112.2, which due to its location, could reasonably be expected to discharge oil, as covered by 40 CFR 110.3, to a "navigable water" of the United States (as defined by Section 502(7) of the Act, 33 U.S.C. §1362(7), and 40 CFR. §§110.1 and 112.2) or its adjoining shoreline in a manner that may either (1) violate applicable water quality standards, or (2) cause a film or sheen 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.

6. The Facility is a "non-transportation-related facility" under the definition incorporated by reference at 40 CFR §112.2 and set forth in an appendix thereto and published on December 18, 1971 in Volume 36 of the Federal Register, at page 24,080.

7. Section 311(j)(1)(C) of the Act, 33 U.S.C. §1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and

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equipment and other requirements for equipment to prevent discharges of oil... from vessel and from onshore and offshore facilities, and to contain such discharges.... ”

8. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to the EPA his Section 311(j)(5) authority to issue the regulations referenced in the preceding paragraph for non-transportation-related onshore facilities.
9. The EPA subsequently promulgated regulations, codified at 40 CFR Part 112, as amended by 67 Fed. Reg. 47140, *et seq.*, July 17, 2002, (“the SPCC regulations”), pursuant to these delegated statutory authorities, and pursuant to its authorities under the Act, 33 U.S.C. § 1251, *et seq.*, which set forth certain procedures, methods and requirements upon each owner and operator of a facility meeting the description in Paragraphs 3 through 6 above if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantities as EPA has determined in 40 CFR Part 110 may be harmful to the public health or welfare or the environment of the United States.
10. Based on the above and pursuant to Section 311(j) of the Clean Water Act and its implementing regulations, the Respondent is subject to the Oil Pollution Prevention requirements of 40 CFR Part 112, the SPCC regulations.

SPECIFIC CLAIMS

1. Under 40 CFR §112.3(a), the owner or operator of an SPCC-regulated facility that began operations before January 10, 1974, shall have prepared an SPCC plan not later than January 10, 1975.
2. The Respondent's Facility began operations before January 10, 1974.
3. Under 40 CFR § 112.3(a), the SPCC Plan must be prepared in writing and in accordance with 40 CFR §112.7 and 40 CFR §112.8.
4. During inspection of the Respondent's Facility by EPA on October 28, 2010, the Complainant determined that the Respondent had not prepared an SPCC Plan in accordance with 40 CFR §112.7 and 40 CFR §112.8, in violation of 40 CFR §112.3(a). (See Attachment A, attached hereto and incorporated herein).
5. Under 40 CFR §112.3(a), the owner or operator of an SPCC-regulated facility that

began operations before January 10, 1974, shall have fully implemented an SPCC Plan no later than January 10, 1975.

6. During an inspection of the Respondent's Facility by the EPA on October 28, 2010, the Complainant determined that the Respondent had not fully implemented an SPCC Plan at the Facility, in violation of 40 CFR §112.3(a). (See Attachment B, attached hereto and incorporated herein).
7. Under 40 CFR §112.5(a), the owner or operator of an SPCC-regulated facility shall amend the SPCC Plan when there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge.
8. During inspections of the Respondent's Facility on October 28, 2010, the Complainant determined that the Respondent had not amended the SPCC Plan following changes in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge, in violation of 40 CFR §112.5(a), and that the SPCC Plan was not certified by a professional engineer, in violation of 40 CFR §112.3(d). (See Attachment C, attached hereto and incorporated herein).

CLAIM FOR RELIEF

1. Complainant realleges and incorporates by reference the allegations in Paragraphs 1 through 8 in the Specific Claims above.
2. As alleged in Paragraph 4, Specific Claims, above, the Respondent's failure to prepare an SPCC Plan for the Facility in accordance with 40 CFR §112.7, violated regulations issued under Section 311(j) of the Act. Pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 CFR §19.4, the Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.
3. As alleged in Paragraph 6, Specific Claims, above, the Respondent's failure to fully implement its SPCC Plan for the Facility as required by 40 CFR §112.3(a), violated regulations issued under Section 311(j) of the Act. Pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 CFR §19.4, the Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.
4. As alleged in Paragraph 8, Specific Claims, above, the Respondent's failure to amend the SPCC Plan following changes in the facility design, construction,

operation, or maintenance that materially affects its' potential for a discharge, as required by 40 CFR §112.5(a), and to have the SPCC Plan certified by a professional engineer, as required by 40 CFR §112.3(d), violated regulations issued under Section 311(j) of the Act. Pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 CFR §19.4, the Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

III. Notice of Proposed Order Assessing a Civil Penalty

Based on the foregoing Findings of Violation and pursuant to the authority of Section 311(b)(6)(B)(i) the Act, 33 U.S.C. §1321(b)(6)(B)(i), and the Debt Collection Improvement Act of 1996, EPA, Region 2 hereby proposes, issue a Final Order Assessing Administrative Penalties ("Final Order") to Respondent assessing a civil penalty of One hundred seventy-two thousand and four hundred dollars (\$172,400). EPA determined the proposed penalty after taking into account the applicable factors identified at Section 311(b)(8) of the Act, 33 U.S.C. §1321(b)(8). These are: 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 economic impact of the penalty on the violator, and any other matters as justice may require.

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case, to the extent known to Complainant at the time of this Complaint.

Based on the Findings set forth above, at a minimum, Respondent has been found to have violated the Act and did not comply with the related SPCC regulations (i.e. development and implementation of a SPCC Plan according to the applicable regulations, etc.), developed to ensure prevention and minimization of contamination of navigable waters of the United States or adjoining shorelines by preventing discharges of oil from facilities and to contain such discharges. The violations discussed in this Complaint are serious and have a potential direct effect on human health and the environment. Respondent obtained an economic benefit as a result of its noncompliance with the Act and the SPCC regulations. Respondent has no prior history of violations. Respondent should have known of its obligations and complied with the applicable SPCC regulations and the Act. All of these factors are identified in Section 311(b)(8) of the Act, 33 U.S.C. §1321(b)(8).

IV. Procedures Governing This Administrative Litigation

The rules of procedure governing this civil administrative litigation have been set forth in

the CROP, which has been codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 CFR § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th floor
New York, New York 10007-1866**

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 CFR §22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 CFR §22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 CFR §22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether Respondent requests a hearing. 40 CFR §22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity To Request A Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 CFR §22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 CFR §22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 CFR §22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 CFR §22.21(d). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§551-59, and the procedures set forth in Subpart D of the CROP, 40 CFR Part 22, Subpart D).

Should Respondent request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under Section 311(b)(6)(C)(i) of the Act, 33 U.S.C. §1321(b)(6)(C)(i), to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondent not request a hearing, EPA will issue a Final Order, and only members of the public who submit timely comment on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

C. Failure To Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation.

40 CFR §22.15(d). If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 CFR §22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 CFR §22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 CFR §22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 CFR §22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 CFR §22.27(c). 40 CFR §22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court.

V. Informal Settlement Conference

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations.

40 CFR §22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability

to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 CFR §22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Tim Murphy, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
(212) 637-3236

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 CFR §22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 CFR §22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 CFR §22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 CFR §22.18(b)(2). In accepting the Consent Agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the Final Order that is to accompany the Consent Agreement. 40 CFR §22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 CFR §22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement

terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entry into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VI. Resolution of this Proceeding Without Hearing or Conference

If you wish to settle this matter without hearing, you may, subject to the provisions of 40 CFR § 22.18(a)(1), either (1) file an Answer to this Complaint and subsequently pay the full penalty requested within 60 days, or (2) within 30 days of your receipt of this Complaint file a written statement with the Regional Hearing Clerk at the address provided above agreeing to pay, and subsequently pay within 60 days of your receipt of this Complaint, the full penalty.

In either case, your payment shall be made by a cashier's or certified check, or by an electronic funds transfer (EFT). If you are paying by check, pay the check to "Environmental Protection Agency," noting on the check "OSTLF-311" and docket number "CWA-02-2011-3809". If you use the U.S. Postal Service, address the payment to "U.S. Environmental Protection Agency, Fines & Penalties, CFC, P.O. Box 979077, St Louis, MO 63197-9000. A copy of the check should be forwarded to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway - 17th Floor
New York, New York 10007.

Pursuant to 40 CFR §22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within 30 days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order in accordance with 40 CFR §22.18(a)(3). In accordance with 40 CFR §22.45(c)(3), no Final Order shall issue until at least ten (10) days after the close of the public comment on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 CFR §22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable regulations and requirements, and to maintain such compliance.

VI. Filing of Documents

1. The Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway - 17th Floor
New York, New York 10007

2. A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Tim Murphy, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 2
290 Broadway, New York, New York 10007
(212) 637-3236

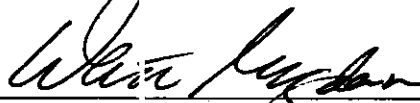
VII. General Provisions

1. Respondent has a right to be represented by an attorney at any stage of these proceedings.

2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act or regulations promulgated thereunder.

3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 311(b)(6) of the Act will affect Respondent's continuing obligation to comply with the Act, and with any regulations promulgated, or orders issued, pursuant thereto.

ISSUED THIS 30th DAY OF September, 2011.



WALTER MUGGDAN, Director
Emergency and Remedial Response Division
United States Environmental Protection Agency
Region 2
290 Broadway

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

126 LLC
126 Passaic Street
Newark, New Jersey 07104

Respondent

Proceeding Pursuant to §311(b)(6) of the
Clean Water Act, 33 U.S.C. §1321(b)(6), for
SPCC Violations

Proceeding to Assess Class II Civil
Penalty Under Section 311(b)(6) of
the Clean Water Act

Docket No. CWA-02-2011-3809

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "ADMINISTRATIVE COMPLAINT" and a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," (64 *Federal Register* 40176 *et seq.*, July 23, 1999) to the following person at the address listed below:

Mr. David Landau
1225 39th Street
Brooklyn, New York 11218

I [hand carried / mailed] the original and a copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Date: 10/13/11
New York, New York


[Signature of Sender]

Attachment A

126 LLC & Innovation Fuels, Inc., Newark, New Jersey

Failure to Prepare an SPCC Plan in Accordance with 40 CFR §112.7

1. Plan is not signed by management at a level of authority to commit the necessary resources to fully implement the Plan. [40 CFR §112.7]
2. Plan does not sufficiently follow the sequence of 40 CFR §112.7, or, alternatively, does not have a section with a cross-reference to the location of requirements in 40 CFR §112.7. [40 CFR §112.7]
3. Plan does not describe the physical layout of the facility and include a facility diagram which marks the location and contents of each container. [40 CFR §112.7(a)(3)]
4. Plan does not sufficiently describe the type of oil in each container and its storage capacity. [40 CFR §112.7(a)(3)(i)]
5. Plan does not sufficiently describe discharge prevention measures including procedures for routine handling of products. [40 CFR §112.7(a)(3)(ii)]
6. Plan does not sufficiently describe discharge or drainage controls such as secondary containment, equipment, and procedures for control of a discharge. [40 CFR §112.7(a)(3)(iii)]
7. Plan does not adequately provide a contact list and phone numbers for the facility response coordinator, National Response Center, clean-up contractors and appropriate Federal, State and local agencies who must be contacted in event of a discharge. [40 CFR §112.7(a)(3)(vi)]
8. Plan does not organize procedures for responding to a discharge in a way that makes them readily usable, including appropriate supporting material. [40 CFR §112.7(a)(5)]
9. Plan does not include a prediction of the direction, rate of flow, and total quantity of potential oil spills for various types of oil storage at the facility. [40 CFR §112.7(b)]
10. Plan does not sufficiently state that appropriate containment are sufficiently impervious to spilled oil. [40 CFR §112.7(c)]

11. Plan does not state that spill prevention briefings highlight and describe known discharges or failures, malfunctioning components, and any recently developed precautionary measures. [40 CFR §112.7(f)(3)]
12. Plan does not state that facility has adequate measures to prevent unauthorized access to starter controls on oil pumps. [40 CFR §112.7(g)(3)]
13. Plan does not indicate that drainage of the loading/unloading rack either flows into a catchment basin or a treatment facility designed to handle discharges; or flows into a containment system designed to hold at least the maximum capacity of any single compartment of any tank truck loaded or unloaded at the facility. [40 CFR §112.7(h)(1)]
14. Plan does not state if any field-constructed aboveground container undergoes repair, alteration, reconstruction, or a change in service that might affect the risk of a discharge or failure due to brittle fracture or other catastrophe, evaluation will be made to determine the risk of discharge or failure due to brittle fracture or other catastrophe, and if necessary, appropriate action taken. [40 CFR Part §112.7(i)]
15. Plan does not state if any field-constructed aboveground container has discharged oil or failed due to brittle fracture failure or other catastrophe, evaluation will be made to determine the risk of discharge or failure due to brittle fracture or other catastrophe, and if necessary, appropriate action taken. [40 CFR Part §112.7(i)]
16. Plan does not address a complete discussion of conformance with applicable requirements and other effective discharge prevention and containment procedures listed in Part 112, or any applicable more stringent State rules, regulations, and guidelines. [40 CFR Part §112.7(j)]

Failure to Prepare an SPCC Plan in Accordance with 40 CFR §112.8

1. Plan does not state drainage from diked storage areas is restrained by valves to prevent a discharge into the drainage system or facility effluent treatment system, or that dikes are emptied by manually activated pumps or ejectors following inspection of the condition of the accumulation to ensure no oil will be discharged. [40 CFR §112.8(b)(1)]
2. Plan does not state that material and construction of containers used for the storage of oil are compatible with the material stored and conditions of storage such as pressure and temperature. [40 CFR §112.8(c)(1)]
3. Plan does not state that bulk storage container installations are provided with a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. [40 CFR §112.8(c)(2)]
4. Plan does not state that the secondary means of containment is sufficiently impervious to contain discharged oil. [40 CFR §112.8(c)(2)]

5. Plan does not state that all aboveground containers are tested for integrity on a regular schedule, and whenever material repairs are made. [40 CFR §112.8(c)(6)]
6. Plan does not state that leakage from defective internal heating coils is controlled by monitoring the steam return and exhaust lines for contamination or passing the steam return or exhaust lines through a settling tank, skimmer, or other separation or retention system. [40 CFR §112.8(c)(7)]
7. Plan does not state that liquid level sensing devices are tested regularly to insure proper operation. [40 CFR 112.8(c)(8)]
8. Plan does not indicate that mobile/portable storage tanks, including drums, have sufficient secondary containment and are located or positioned so as to prevent spilled oil from reaching navigable waters. [40 CFF. §112.8(c)(11)]
9. Plan does not state that integrity and leak testing of buried piping is conducted at the time of installation, modification, construction, relocation, or replacement. [40 CFR §112.8(d)(4)].

Attachment B

126 LLC & Innovation Fuels, Inc., Newark, New Jersey

Failure to Implement the SPCC Plan in accordance with 40 CFR §112.7

1. Facility does not provide appropriate containment and/or diversionary structures or equipment to prevent a discharge. [40 CFR § 112.7(c)]
2. Inspections and tests have not been recorded in accordance with written procedures, signed by the appropriate supervisor, and maintained with the SPCC plan for a period of three years. [40 CFR §112.7(e)]
3. Personnel have not been instructed in the operation and maintenance of equipment to prevent discharges, discharge procedure protocols, applicable pollution control laws, rules and regulations, general facility operations and the contents of the SPCC Plan. [40 CFR §112.7(f)(1)].
4. Facility does not adequately secure master flow and drain valves. [40 CFR §112.7(g)(2)]
5. Facility does not adequately prevent unauthorized access to starter controls on oil pumps. [40 CFR §112.7(g)(3)].
6. Facility does not adequately secure out-of-service and loading/unloading connections of oil pipelines. [40 CFR §112.7(g)(4)]
7. Drainage of the loading/unloading rack does not flow into a catchment basin or a treatment facility designed to handle discharges, or into a containment system designed to hold at least the maximum capacity of any single compartment of any tank truck loaded or unloaded at the facility. [40 CFR §112.7(h)(1)]

Failure to Implement an SPCC Plan in Accordance with 40 CFR §112.8

1. Secondary containment does not appear sufficiently impervious to contain discharged oil. [40 CFR §112.8(c)(2)].
2. All aboveground containers are tested for integrity on a regular schedule, and whenever material repairs are made. [40 CFR §112.8(c)(6)]
3. Facility has not determined and implemented, in accordance with industry standards, the appropriate qualifications of personnel performing tests and inspections and the frequency and type of testing and inspections, which take into account container size, configuration, and design. [40 CFR §112.8(c)(6)]

4. Fail-safe engineering method used to avoid overfilling bulk storage tanks is not present. [40 CFR §112.8(c)(8)]
5. Liquid level sensing devices are not tested regularly to insure proper operation. [40 CFR 112.8(c)(8)]
6. Visible discharges which result in a loss of oil from the container are not promptly corrected. [40 CFR §112.8(c)(10)]
7. Mobile/portable storage tanks, including drums, do not have sufficient secondary containment and are not located or positioned so as to prevent spilled oil from reaching navigable waters. [40 CFR §112.8(c)(11)]

Attachment C

126 LLC & Innovation Fuels, Inc., Newark, New Jersey

Failure to Amend the SPCC Plan Following Changes at the Facility [40 CFR §112.5(a)]

1. Plan has not been amended following changes which materially affect the facility's potential to discharge oil. Plan has not been amended within 6 months of changes to the facility. [40 CFR §112.5(a)]

Failure to Have the SPCC Plan Certified [40 CFR §112.3(d)]

1. SPCC plan is not certified by a registered professional engineer. [40 CFR §112.3(d)]

