

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

2007 SEP 10 PM 2:57

REGION 4

HEARING CLERK

IN THE MATTER OF:

Southern Class Trucking, Inc.  
1997 Highway 341 S.  
Yatesville, GA 31097

Respondent.

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

Proceeding to Assess Class II  
Civil Penalty under Section  
311 of the Clean Water Act  
for Spill Violation

Docket No. CWA-04-2007-5188

**LEGAL AUTHORITY**

1. This Administrative Complaint is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(ii) of the Clean Water Act ("Act"), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990. The Administrator has delegated this authority to the Regional Administrator of EPA, Region 4, who in turn has delegated it to the RCRA Division Director of EPA, Region 4 ("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," codified at 40 C.F.R. Part 22 ("Part 22"), Complainant hereby provides notice of its proposal that the Administrator assess a civil penalty against Southern Class Trucking, Inc. ("Respondent") for the 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 Act, 33 U.S.C. § 1321(b)(3), and notice of Respondent's opportunity to file an Answer to this Complaint and to request a hearing on the proposed penalty assessment.

### **ALLEGATIONS**

3. Respondent is a corporation organized under the laws of Georgia with a place of business located at 1997 Highway 341 S. in Yatesville, Georgia. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

4. Respondent was the owner and operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of a tanker truck ("the facility") that was involved in a single vehicle traffic accident at or about the intersection of Wallace Avenue and 5<sup>th</sup> Street NE in Fort Payne, DeKalb County, Alabama, on September 13, 2002.

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).

6. Hawkins Spring Creek, which flows to the Coosa River, is a navigable water of the United States subject to the jurisdiction of Section 311 of the Act, as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

7. Section 311(b)(3) of the Act prohibits the discharge of oil, as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

8. For purposes of Sections 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities

that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. § 110.3 to include discharges of oil that (1) violate applicable water quality standards or (2) cause a film or a 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 the adjoining shorelines.

9. On September 13, 2002, Respondent discharged 124 barrels of oil from its facility into or upon Hawkins Spring Creek and its adjoining shorelines.

10. Respondent's September 13, 2002, discharge of oil from its facility caused a sheen upon or discoloration of the surface of Hawkins Spring Creek and a sludge or emulsion to be deposited beneath the surface of Hawkins Spring Creek, and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, in violation of Section 311(b)(3) of the Act.

11. As alleged in the preceding Paragraph, and pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to a maximum of \$137,500.

#### **PROPOSED PENALTY**

12. Based on the forgoing Allegations, and pursuant to the authority of Section 311(b)(6)(B)(ii) of the Act, the Complainant proposes that the Administrator, after considering the statutory penalty factors set forth at Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), issue a Final Order assessing administrative penalties against Respondent in an amount not to exceed \$11,000 per day for each day during which the violation continues (in other words, per day per violation); except that the maximum amount shall not exceed \$137,500. The violation

alleged in Paragraphs 9 and 10 caused a minor environmental impact because the discharge did not pose a significant threat to human health, navigable waters, an actual or potential drinking water supply, a sensitive ecosystem, or wildlife. However, the violation was of major duration given that it continued for twenty days until the discharge was removed. Therefore, the violation alleged in Paragraphs 9 and 10 represents a very serious violation of the Act.

**ANSWER AND OPPORTUNITY TO REQUEST HEARING**

13. Default constitutes an admission of all facts alleged in this Complaint and a waiver of Respondent's 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 with:

Patricia Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

Respondent is also required, pursuant to § 22.5(b) of the enclosed Consolidated Rules of Practice, to provide a contemporaneous copy of any Answer to the Complainant.

14. Pursuant to 40 C.F.R. § 22.15, Respondent's 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 Respondent states in its Answer that it has no knowledge of a particular factual allegation, the allegation shall be deemed denied. Otherwise, Respondent's

failure to admit, deny, or explain any material factual allegation contained in this Complaint constitutes an admission of the allegation. Respondent's 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.

15. Following receipt of Respondent's Answer, a Presiding Officer will be assigned. The Presiding Officer will notify the parties of his/her assignment, and shall notify the parties of the time and place of further proceedings in the case.

16. In Respondent's Answer to this Complaint, it may, pursuant to Section 311(b)(6) of the Act and 40 C.F.R. § 22.15(c), request a hearing on any material fact alleged in this Complaint, or on the appropriateness of any penalty it proposes. Even if Respondent does not explicitly request a hearing in its Answer, the Presiding Officer may hold such a hearing if Respondent's 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.

#### **PUBLIC NOTICE**

17. Pursuant to Section 311(b)(6)(C) of the Act, 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 Section 311(b)(6)(C) of the Act to be heard and present evidence at the hearing.

**INFORMAL CONFERENCE**

18. Respondent may request an informal conference with the Complainant's representative concerning the alleged violations, the amount of the proposed penalty, and the possibility of settlement. A request for an informal conference does not extend any deadline in this proceeding, including the deadline by which Respondent must submit an Answer to this Complaint.

**SERVICE OF DOCUMENTS**

19. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in the proceeding:

Colleen E. Michuda  
Associate Regional Counsel  
United States Environmental Protection Agency, Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303  
(404) 562-9685  
[michuda.colleen@epa.gov](mailto:michuda.colleen@epa.gov)

If Respondent has any questions concerning the settlement process, or wishes to arrange for an informal conference, please contact Colleen Michuda at (404) 562-9685.

Date: \_\_\_\_\_

9/6/07  
\_\_\_\_\_  
G. Alan Farmer

RCRA Division Director  
United States Environmental Protection Agency, Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the original and one copy of the Foregoing Complaint, in the Matter of Southern Class Trucking, Inc., Docket No. CWA-04-2007-5188, on the following in the manner indicated below:

Ms. Patricia Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency – Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

I hereby certify that I have this day served a true and correct copy of the Foregoing Complaint, in the Matter of Southern Class Trucking, Inc., Docket No. CWA-04-2007-5188, on the following in the manner indicated below:

Corporal Ken Green, Lamar County Sheriff's Office, 121 Roberta Drive, Barnesville, Georgia 30204, via Federal Express for the purpose of hand delivery to:

Daniel Moxon, President  
Southern Class Trucking, Inc.  
1997 Highway 341 S.  
Yatesville, Georgia 31097

Proof of service of the Complaint to Southern Class Trucking, Inc. shall be made by affidavit of the person making personal service and shall be filed with the Regional Hearing Clerk immediately upon completion of service.

Dated this 10<sup>th</sup> day of September, 2007.

Colleen E. Michuda  
Ms. Colleen E. Michuda  
Associate Regional Counsel  
U.S. Environmental Protection Agency – Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303