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Annie Dwight, Esq.

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OFFICE OF
REGIONAL HEARING CLERK

July 1, 2011

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

Re: In the Matter of Rowley Fuels, Inc.
Docket No. CWA-01-2011-0017

Dear Ms. Santiago,

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

Thank you for your attention to this matter. Please feel free to contact me with any questions.

Sincerely,

WALSH & MONAGHAN, LLP



Claudine C. Safar, Esq.

Enclosures
cc: Kathleen Woodward
Client



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

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IN THE MATTER OF:)

ADMINISTRATIVE COMPLAINT AND
NOTICE OF OPPORTUNITY TO REQUEST A
HEARING

ROWLEY FUELS, INC.)

10 Industrial Park)
Alburgh, Vermont)

Proceeding to Assess Class II Civil Penalty Under
Clean Water Act Section 311

Respondent.)

Docket No. CWA-01-2011-0017

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 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 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 Rowley Fuels, 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 Section 311(j), 33 U.S.C. § 1321(j). 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. Section 311(j)(1) of the Act, 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”

4. Under the authority of Section 311(j)(1) of the Act, 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).

5. Under 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. “Navigable waters” of the United States are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), as “waters of the United States” and are further defined in 40 C.F.R. § 110.1.

II. GENERAL ALLEGATIONS

7. Respondent is a corporation organized under the laws of Vermont with its headquarters located in Milton, Vermont, and, therefore, is a “person” within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

8. Respondent is the “owner or operator” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of a facility that stores and sells petroleum products located at 10 Industrial Park Road in Alburgh, Vermont (the “Facility”).

9. The Facility is normally an unattended facility.

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

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

12. 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 C.F.R. § 112.2.

13. 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.

14. Due to the location of the Facility with respect to Lake Champlain and the topography of the area, the facility could reasonably be expected to discharge oil into Lake Champlain and the downstream bodies of water.

15. Lake Champlain is a “navigable water” of the United States” and is subject to the jurisdiction of Section 311 of the Act, 33 U.S.C. § 1321, as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

16. Based on the allegations in paragraphs 7 through 15 above, Respondent is the owner and operator of a non-transportation-related facility engaged in storing, using, distributing 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.

III. VIOLATIONS

Count I: Failure to Maintain and Implement an SPCC Plan in Violation of

40 C.F.R. § 112.3

17. On June 16, 2010, an authorized EPA representative inspected the Facility for compliance with Section 311(j) of the Act, in particular, the requirements of the Oil Pollution Prevention regulations.

18. 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 maintained and implemented an SPCC plan that is in accordance with the requirements of 40 C.F.R. § 112.7.

19. Respondent has owned and operated the facility since December of 1999.

20. EPA determined that the facility had a SPCC Plan but that the SPCC Plan was deficient and the Respondent neither maintained nor fully implemented the SPCC Plan, in violation of Section 311(j) of the Act. 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. Respondent's failure to maintain and fully implement an SPCC plan, includes, but is not limited to the following deficiencies:

- a. The Facility lacked appropriate secondary containment for its aboveground bulk oil storage tanks to prevent a discharge of oil as required by 40 C.F.R. § 112.7(c);
- b. The Facility lacked a containment system at its loading rack that could hold at least the maximum capacity of any single compartment of tank truck loaded or unloaded at the facility as required by 40 C.F.R. § 112.7(h);
- c. The Facility failed to conduct tank inspections, failed to conduct leak testing of valves and piping associated with each bulk storage container and failed to conduct integrity testing as required by the Oil Pollution Prevention Regulations, and failed to keep written procedures and a record of such inspections and tests, signed by the appropriate supervisor or inspector, with the SPCC plan as required by 40 C.F.R. § 112.7(e);
- d. The Facility failed to provide and demonstrate that it had trained oil-handling personnel 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 as required by 40 C.F.R. § 112.7(f).

21. Respondent's failure to maintain and implement a SPCC plan for the facility in accordance with the requirements of 40 C.F.R. Part 112.7, as described above, violated 40 C.F.R. Part 112.3. Respondent violated these requirements for each day for the period of violation, which was for a total of at least 1,563 days.¹

IV. PROPOSED PENALTY

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

¹ EPA is not, however, 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.

23. Respondent's violations of the Oil Pollution Prevention Regulations alleged above represent significant violations of the 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.

V. OPPORTUNITY TO REQUEST HEARING

24. Respondent may, pursuant to Section 311(b)(6) of the Act 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.

25. 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:

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

26. 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.

27. 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

28. 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.

VII. SETTLEMENT

29. You may request an informal conference with Complainant's attorney, Kathleen Woodward, 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.

30. If you have any questions concerning the enclosed Consent Agreement or the settlement process, or wish to arrange for an informal conference, please contact Kathleen Woodward at (617) 918-1780.

Date: 06/03/11

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

In the Matter of Rowley Fuels, Inc.
Docket No. CWA-01-2011-0017

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

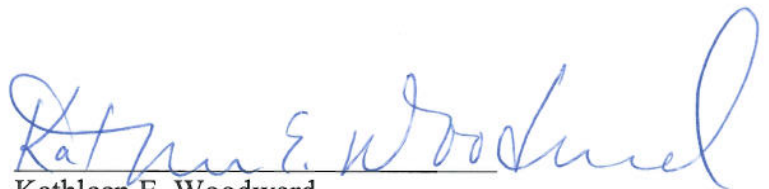
Copy and a copy of the
Part 22 Rules by certified mail,
return receipt requested:

Scott Allard, President
Rowley Fuels, Inc.
P.O. Box 21
10 Main Street
Milton, VT 05468

Copy by certified mail,
Return receipt requested:

Leslie Rowley, Registered Agent
Rowley Fuels, Inc.
P.O. Box 21
10 Main Street
Milton, VT 05468

Dated: June 6, 2011



Kathleen E. Woodward
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U.S. Environmental Protection Agency, Region 1
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