



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
1 Congress Street
Suite 1100 - SEL
Boston, MA 02114-2023

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DEC 15 2008

Wanda Rivera
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region I
One Congress Street
Suite 1100, Mail Code RAA
Boston, MA 02114-2023

BY HAND

Re: Notice of CWA Administrative Penalty Complaint Issued to
HOP Energy, LLC, d.b.a. DDLC Energy, New London, CT
Docket No. CWA-01-2009-0004

Dear Ms. Rivera:

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,

Tonia Bandrowicz
Senior Enforcement Counsel

Enclosure

cc: William H. Weber, HOP Energy, LLC



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
ONE CONGRESS STREET SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

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CERTIFIED MAIL; RETURN RECEIPT REQUESTED

DEC 15 2008

William H. Weber,
Director of Capital Resources
HOP Energy, LLC
613 Ways Lane
Kennett Square, PA 19345

Re: In the Matter of: HOP Energy, LLC, d.b.a. DDLC Energy
CWA-01-2009-0004

Dear Mr. Weber:

Enclosed is an administrative Complaint that the U.S. Environmental Protection Agency (EPA) is issuing to HOP Energy, LLC, d.b.a. DDLC Energy, as a result of our determination that the company has violated the Oil Pollution Prevention regulations (found at 40 C.F.R. Part 112) promulgated under Section 311(j) of the Clean Water Act (CWA), 33 U.S.C. § 1321(j), at its facility located at 410 Bank Street, New London, Connecticut (the "Facility"). Specifically, EPA has determined that from at least December 4, 1997 to October 28, 2008, the Facility had not fully implemented its SPCC plan, and that, from at least May 19, 2008 to November 6, 2008, the Facility had not fully prepared or implemented its federal response plan. The statutory authorities for EPA's enforcement action, the nature of the alleged violations, and the proposed penalty are set forth in the attached Complaint. Pursuant Section 311(b)(6) of the CWA, EPA's Complaint seeks up to the statutory maximum penalty in an administrative forum of \$11,000 per day of violation, up to a maximum of \$157,500, for the alleged violations.

Please be advised that you have the right to request a hearing regarding the violations alleged in the Complaint and the appropriate penalty. If you wish to request a hearing, you must submit, within thirty days of receiving this letter, a written request to the Regional Hearing Clerk at the address set forth in the enclosed Complaint. The written request must be submitted with an Answer to the Complaint and must follow the requirements of the Consolidated Rules of Practice Governing the Administrative Assessment of Penalties, set forth at 40 C.F.R. Part 22. A copy of 40 C.F.R. Part 22 is

enclosed. **Failure to submit a request for a hearing within thirty days may result in default, as further explained in the Complaint.**

You have the right to be represented by an attorney at any stage of the proceeding, including any informal discussions with EPA. Also enclosed is EPA's Information Sheet for Small Business Resources, which may be useful to you. Finally, you should know that it is the practice of this office to inform the press upon issuing administrative complaints.

If you wish to discuss settlement or if you have any questions regarding this matter, please contact Tonia Bandrowicz, Senior Enforcement Counsel, of my staff at (617) 918-1734.

Sincerely,



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

Enclosures

1. Complaint
2. Consolidated Rules of Practice (40 C.F.R. Part 22)
3. Copy of letter to Hearing Clerk
4. Copy of Certificate of Service
5. Information Sheet for Small Business Resources

cc:

Phyllis Rondeau, DDL Energy
Nicole Lugli, CT DEP
Mark Decaprio, CT DEP
Douglas J. Miller, USCG
Tonia Bandrowicz, Senior Enforcement Counsel, EPA Region 1
Mia Pasquerella, On-Scene Coordinator, EPA Region 1
Melanie Morash, On-Scene Coordinator, EPA Region 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

IN THE MATTER OF:

HOP Energy, LLC
d.b.a. DDLC Energy
410 Bank Street
New London, Connecticut, 06320,

Respondent.

ADMINISTRATIVE COMPLAINT AND
NOTICE OF OPPORTUNITY TO
REQUEST HEARING

Proceeding to Assess Class II Civil Penalties
Under Section 311 of the Clean Water Act
for Violations of the Oil Pollution Prevention
Regulations at 40 C.F.R. Part 112

Docket No. CWA 01-2009-0004

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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 (the "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," at 40 C.F.R. Part 22 ("Part 22"), Complainant hereby provides notice of its proposal to assess a civil penalty against HOP Energy, LLC, d.b.a. DDLC Energy ("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) of the Act, 33 U.S.C. § 1321(j), and other provisions of the Act, 33 U.S.C. §§ 1251 *et seq.* 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. Sections 311(j)(5) of the Act, 33 U.S.C. § 1321(j)(5), provides that the President shall issue regulations requiring the owner or operator of “an onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or upon the navigable waters [or] adjoining shorelines” to “submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil.”

6. Under the authority of Section 311(j)(5) of the Act, Subparts A and D of 40 C.F.R. Part 112 (“the Facility Response Plan or FRP regulations”) require FRP-regulated facilities to, among other things, develop and implement a facility response training program and a drill/exercise program that satisfy the requirements of the regulations. 40 C.F.R. 112.21(a).

II. GENERAL ALLEGATIONS

7. Respondent, HOP Energy, LLC, a corporation organized under the laws of Delaware, with a principal place of business in Darien, Connecticut, is the parent corporation of DDLC Energy, located in New London, Connecticut. Both HOP Energy, LLC, and DDLC Energy, are “persons” 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, doing business as DDLC Energy, 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 an oil storage and distribution facility located at 410 Bank Street, New London, Connecticut (“the Facility”).

9. According to the Facility’s Spill Prevention Control and Countermeasure (“SPCC”) plan, the Facility has been in operation since the mid-1950s or earlier, and was previously known as the City Coal Co. Facility. Respondent has owned and operated the Facility as a fuel oil storage and distribution business since December 4, 1997.

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

11. 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.

12. 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.

13. The Facility is located directly adjacent to Shaw’s Cove on the Thames River which is a “navigable water” of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

14. Due to its immediate proximity to Shaw's Cove on the Thames River, the Facility could reasonably be expected to discharge oil into a navigable water or its adjacent shoreline.

15. As the owner and operator of a non-transportation-related facility engaged in storing, distributing, and consuming oil or oil products that could reasonably be expected to discharge oil in quantities that may be harmful, as defined in 40 C.F.R. § 110.3, to navigable waters of the United States, Respondent is subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112.

16. 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 prepared and implemented an SPCC plan that is in accordance with the requirements of 40 C.F.R. § 112.7.¹

17. As the owner and operator of a non-transportation-related facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines, Respondent is also subject to Section 311(j)(5) of the Act and the FRP Regulations at 40 CFR Part 112.

18. Under 40 C.F.R. §§ 112.20 and 112.20(h), the owner or operator of an FRP-regulated facility shall prepare a Facility Response Plan that addresses the elements listed in the regulation.

19. Under 40 C.F.R. § 112.20(c), EPA shall determine whether a facility could, because of its location, reasonably be expected to cause significant and substantial harm to the environment (a "significant and substantial harm facility") by discharging oil, and, if so, review the facility's response plan periodically thereafter, on a schedule not to exceed five years.

¹The Preamble to the amended 2002 SPCC regulations for 40 CFR § 112.3(a) notes that "The owner or operator of a facility in operation on the effective date of this rule who is required to have prepared or implemented an SPCC Plan, but has not, remains subject to civil penalties for a violation of current § 112.3 if the time has expired for preparation or implementation of his Plan." 67 Fed. Reg. 47042, 47083 (July 17, 2002).

20. The Facility is listed by the EPA New England Office as a “significant and substantial harm” facility; therefore, EPA reviewed the Facility’s FRP every five years. It is also the general practice of the EPA New England Office to review a facility’s SPCC plan in conjunction with the facility’s 5-year FRP review.

21. The EPA New England Office had on file an SPCC plan for the Facility dated February 1999 prepared by the Facility’s previous owner, City Coal Corporation. Such plan had not been updated to reflect current ownership by HOP Energy, LLC.

22. The EPA New England Office also had on file an FRP plan for the Facility, which had been previously approved by EPA on November 5, 2004.

III. VIOLATIONS

Count 1

Failure to Fully Implement an SPCC Plan in Violation of 40 C.F.R. § 112.3

23. On May 15, 2008 EPA conducted a review of the Facility’s SPCC plan, followed by an inspection at the Facility on May 19, 2008. As a result of EPA’s plan review and field inspection, EPA determined that the Respondent had failed to adequately provide for measures which would prevent the discharge of oil from reaching waters of the United States and to implement specific requirements listed in 40 C.F.R. §§ 112.7 and 112.8. In particular, cracking and gaps were observed in the concrete dike walls, in violation of the requirement at 40 C.F.R. § 112.7(c) and 112.8(c)(2) to provide a containment system, inclusive of the walls and floor, sufficiently impervious to contain discharged oil; no containment was provided for a fuel transfer area (near which were catch basins which drain to the municipal sewer system and Thames River), in violation of the SPCC requirement at 40 C.F.R. § 112.7(c) to provide containment capable of containing oil; and the containment dike was evaluated by the Facility’s Professional

Engineer and found to require additional containment (lowering of the floor), to meet the containment size requirement at 40 C.F.R. § 112.8(c)(2).

24. EPA hand-delivered a Memo, dated May 15, 2008, to Facility representatives on the day of the inspection. This memo summarized EPA's plan review findings and also included handwritten notes which were added at the time of the inspection.

25. By cover letter to EPA dated July 5, 2008, Respondent submitted a revised SPCC plan dated July 8, 2008. EPA received additional supporting information from the Respondent on August 1, 2008 and later that day telephoned a representative of the Facility to discuss the revision and request additional changes. EPA subsequently received additional revisions to Respondent's SPCC plan and supporting materials on October 10, 14, and 28, 2008. By letter dated November 6, 2008, EPA informed the Respondent that its submissions addressed the noted deficiencies.

26. Respondent's failure to fully implement an SPCC plan for the Facility in accordance with the requirements of 40 C.F.R. §§ 112.7 and 112.8 violated 40 C.F.R. § 112.3. Respondent violated these requirements from December 4, 1997, the date it first acquired the facility, through October 28, 2008, the date Respondent finished sending information to EPA and had a revised SPCC plan that satisfied the requirements of 40 C.F.R. §§ 112.7 and 112.8.

27. 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 \$11,000 per day for each day during which the violation continues, up to a maximum of \$157,500. EPA considers each day Respondent failed to have a fully implemented an SPCC plan for the Facility to be a separate day of violation.

Count 2

Failure to Implement a Facility Response Training Program and Drill/Exercise Program in Violation of 40 C.F.R. § 112.21(a) and (c)

28. Paragraphs 1 through 27 are incorporated by reference.

29. Pursuant to 40 C.F.R. § 112.21(a), the owner or operator of an FRP-regulated facility shall develop and implement a facility response drill/exercise program pursuant to the requirements of 40 C.F.R. § 112.21(c) that satisfies the requirements of 40 C.F.R. Part 112.

30. In accordance with § 112.21(c), in developing a program of facility response drills/exercises, the facility owner or operator may either follow the National Preparedness for Response Exercise Program (PREP), or an alternative program, if approved by the EPA Regional Administrator. In this case, the Facility FRP stated that the program was developed in accordance with PREP.

31. On May 19, 2008, representatives of EPA, the Connecticut Department of Environmental Protection (“CTDEP”), and U.S. Coast Guard (“USCG”) conducted a Government-Initiated Unannounced Exercise (“GIUE”) under the PREP and determined that Respondent could not properly implement its response plan and that Respondent’s personnel were not adequately trained in implementing the response plan, resulting in an “unsuccessful” overall exercise.

32. The objective of the GIUE is to determine whether the Respondent can successfully conduct response actions, through emergency notifications and spill response equipment deployment, to mitigate a simulated release of oil. The GIUE rates the Respondent’s efforts as either successful or unsuccessful in five categories: (1) notifications; (2) containment boom arrival and subsequent successful deployment; (3) arrival of oil recovery devices and subsequent successful operation; (4) demonstrating availability of adequate storage capacity; and (5)

properly conducting the exercise considering the size of a small spill. The Respondent was rated “unsuccessful” in all categories except for demonstrating availability of adequate storage capacity.

33. On the date of the inspection and by letter dated June 6, 2008, EPA informed the Respondent that it had failed to successfully satisfy all of the objectives of the GIUE and that the deficiencies documented during the exercise (including notifications and the use of the FRP, containment boom arrival and subsequent successful deployment, arrival of oil recovery devices, and properly conducting the exercise considering the size of a small spill) must be addressed in order to meet the requirements of the FRP regulations. In addition, EPA informed Respondent that it would have to address the deficiencies previously outlined in EPA’s review of the FRP plan as set forth in the Agency’s May 15, 2008 memo.

34. Based on Respondent’s failure to successfully satisfy all the objectives of the GIUE, on May 19, 2008, the USCG issued a Captain of the Port Order (#LIS 018-08) suspending transfer operations at the Facility by vessel until such time as the Respondent could show sufficient evidence that it has the ability to provide the required response equipment within the allotted time frames. Such Captain of the Port Order was not released until July 25, 2008.

35. By cover letter to EPA dated July 14, 2008, Respondent submitted a revised FRP to EPA.

36. By letter dated November 6, 2008, EPA approved Respondent’s revised FRP.

37. From at least May 19, 2008, the date of the GIUE, to November 6, 2008, the date EPA approved Respondent’s revised FRP, Respondent failed to have developed an adequate facility response training program or a facility response drill/exercise program that satisfies the requirements of 40 CFR Part 112

38. From at least May 19, 2008, the date of the GIUE, to November 6, 2008, the date EPA approved Respondent's revised FRP, Respondent failed to have implemented an adequate facility response training program or a facility response drill/exercise program that satisfies the requirements of 40 CFR Part 112.

39. Respondent's failure to develop and implement such programs violates the requirements of 40 C.F.R. §112.21(a).

40. 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 \$11,000 per day for each day during which the violation continues, up to a maximum of \$157,500. EPA considers each day Respondent failed to have developed or implemented facility response training program or a facility response drill/exercise program to be a separate day of violation.

IV. PROPOSED PENALTY FOR CWA VIOLATION

41. 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, taking into account the seriousness of the violation, 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 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.

42. Respondent's violations of the Oil Pollution Prevention regulations alleged above represent significant violations of the Act because failure to fully prepare and implement adequate SPCC and FRP plans 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

43. 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.

44. 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 (RAA)
U.S. Environmental Protection Agency-Region 1
One Congress Street, Suite 1100
Boston, Massachusetts 02114-2023

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:

Tonia Bandrowicz, Senior Enforcement Counsel
Office of Environmental Stewardship (SEL)
U.S. Environmental Protection Agency-Region I
One Congress Street, Suite 1100
Boston, Massachusetts 02114-2023
Tel: 617-918-1734
Fax: 617-918-0734
Email: bandrowicz.toni@epa.gov

45. 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.

46. 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

47. 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 you. 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

48. You may request an informal conference with Complainant's attorney, Tonia Bandrowicz, 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.

49. If you have any questions concerning the enclosed Consent Agreement or the settlement process, or wish to arrange for an informal conference, please contact Tonia Bandrowicz, Senior Enforcement Counsel, at (617) 918-1734.

Date: 12-12-08

Sam Silverman, acting for

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

In the Matter of HOP Energy, LLC d.b.a. DDLC Energy
EPA Docket No. CWA-01-2009-0004

CERTIFICATE OF SERVICE

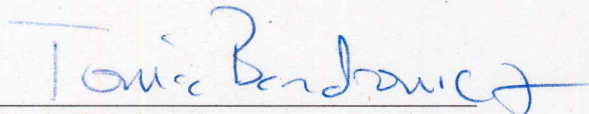
I certify that the enclosed Complaint was transmitted to the following persons, in the manner specified, on the date below:

Original and one copy hand-delivered to:

Wanda I. Rivera
Regional Hearing Clerk
U.S. EPA - Region I
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114-2023

Copy by certified mail,
return receipt requested:

William H. Weber,
Director of Capital Resources
HOP Energy, LLC
613 Ways Lane
Kennett Square, PA 19345



Tonia Bandrowicz
U.S. EPA - Region I
One Congress Street, Suite 1100 (SEL)
Boston, MA 02114-2023
Phone: (617) 918-1734
Fax: (617) 918-0734

12/15/08
Dated