



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

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

JUN 21 2010

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 Munce's Superior Petroleum Products, Inc. and Munce's Superior, Inc.
Docket No. CWA-01-2010-0040

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,

A handwritten signature in blue ink that reads "Tonia Bandrowicz".

Tonia Bandrowicz
Senior Enforcement Counsel

Enclosure

cc: Harold Munce,
Munce's Superior Petroleum Products, Inc.

Robert Munce,
Munce's Superior, Inc.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

IN THE MATTER OF:)	
)	ADMINISTRATIVE COMPLAINT AND
)	NOTICE OF OPPORTUNITY TO REQUEST A
MUNCE'S SUPERIOR)	HEARING
PETROLEUM PRODUCTS, INC.)	
620 Main Street)	
Gorham, New Hampshire, 03581)	
)	Proceeding to Assess Class II Civil Penalty Under
and)	Clean Water Act Sections 308 and 311 for
)	Reporting and SPCC Violations
MUNCE'S SUPERIOR, INC.)	
620 Main Street)	
Gorham, New Hampshire, 03581,)	
)	
Respondents.)	Docket No. CWA-01-2010-0040

I. STATUTORY AUTHORITY

1. This Administrative Complaint is issued under the authority vested in the U.S. Environmental Protection Agency ("EPA") by sections 309(g)(1) and 311(b)(6)(B)(ii) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §§ 1319(g)(1) and 1321(b)(6)(B)(ii), and 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" is the Director of the Office of Environmental Stewardship, EPA, Region 1.

2. Pursuant to sections 309(g)(1) and 311(b)(6)(B)(ii) of the Act, and in accordance with Part 22, Complainant hereby provides notice of its proposal to assess a civil penalty against Munce's Superior, Inc. ("Munce's Superior") and Munce's Superior Petroleum Products, Inc. ("Munce's Superior Petroleum Products") (collectively "Respondents") for the 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. In addition, pursuant to sections 309(g)(1) and 311(b)(6)(B)(ii) of the Act, and in accordance with Part 22, Complainant hereby provides notice of its proposal to assess a civil penalty against Munce's Superior for failure to respond to a request for information by EPA, in violation of section 308 of the Act, 33 U.S.C. § 1318. This Complaint also provides notice of Respondents' 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, delegated to EPA, 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, at 40 C.F.R. part 112, 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(a), the owner or operator of a regulated onshore facility

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must prepare a Spill Prevention Control and Countermeasure (“SPCC”) Plan in writing and in accordance with 40 C.F.R. § 112.7, and any other applicable sections of part 112. If the facility became operational prior to August 16, 2002, the owner or operator must maintain its SPCC plan.

II. GENERAL ALLEGATIONS

6. Munce’s Superior is a company organized under the laws of New Hampshire with its headquarters located at 620 Main Street, Gorham, New Hampshire, 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.

7. Munce’s Superior Petroleum Products is a company organized under the laws of New Hampshire with its headquarters also located at 620 Main Street, Gorham, New Hampshire, 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. Respondents are the “owners or operators” 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 four bulk oil storage and distribution facilities located at 443, 615, 619, and 620 and 624 Main Street, Gorham, New Hampshire (the “Facilities”).

9. Respondents store “oil” or oil products at the Facilities within the meaning of section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2.

10. The Facilities are “onshore facilities” 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.

11. The Facilities are “non-transportation-related” facilities within the meaning of Appendix A of 40 C.F.R. § 112.

12. The facility at 443 Main Street (“443 Main Facility”) is located approximately 500 feet from the Androscoggin River. There is a downward sloping path from the 443 Main Facility that travels overland to a storm drain that empties into the Androscoggin River. Due to the location of the 443 Main Facility with respect to the storm drain that empties into the Androscoggin River and the topography of the area, the 443 Main Facility could reasonably be expected to discharge oil into the Androscoggin River and downstream bodies of water.

13. The facility at 615 Main Street (“615 Main Facility”) is located approximately 500 feet from the Androscoggin River. There is a downward sloping path from the 615 Main Facility that travels overland to storm drains that empty into the Androscoggin River. Due to the location of the 615 Main Facility with respect to the storm drains that empty into the Androscoggin River and the topography of the area, the 615 Main Facility could reasonably be expected to discharge oil into the Androscoggin River and downstream bodies of water.

14. The facility at 619 Main Street (“619 Main Facility”) is located approximately 250 feet from the Androscoggin River. There is a downward sloping path from the 619 Main Facility that travels overland to the Androscoggin River. Due to the location of the 619 Main Facility with respect to the Androscoggin River and the topography of the area, the 619 Main Facility could reasonably be expected to discharge oil into the Androscoggin River and downstream bodies of water.

15. The facility at 620 and 624 Main Street (“620 and 624 Main Facility”) is located

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approximately 50 feet from the Androscoggin River. There is a downward sloping path from the 620 and 624 Main Facility that travels overland to the Androscoggin River. Due to the location of the 620 and 624 Main Facility with respect to the Androscoggin River and the topography of the area, the 620 and 624 Main Facility could reasonably be expected to discharge oil into the Androscoggin River and downstream bodies of water.

16. The Androscoggin River flows into the Merrymeeting Bay in Maine, which flows into the Lower Kennebec River and ultimately into the Atlantic Ocean.

17. The Androscoggin River, the Merrymeeting Bay, the Lower Kennebec River and the Atlantic Ocean are “navigable waters” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1, and are, therefore, subject to the jurisdiction of section 311 of the Act, 33 U.S.C. § 1321.

18. Based on a July 25, 2000 SPCC plan prepared for it, the 443 Main Facility had one 15,000 gallon aboveground diesel fuel storage tank, subjecting it to the requirements of the Oil Pollution Prevention regulations, at 40 C.F.R. part 112 since at least July 25, 2000.

19. Based on a September 16, 1998 SPCC plan prepared for it, the 615 Main Facility had one 20,000 gallon aboveground diesel fuel storage tank, one 20,000 gallon aboveground kerosene storage tank, three 20,000 gallon aboveground #2 heating oil tanks and one 12,000 gallon aboveground red diesel fuel tank. Therefore, as of at least that date, the 615 Main Facility had an aggregate aboveground storage capacity of approximately 112,000 gallons, subjecting it to the requirements of the Oil Pollution Prevention regulations at 40 C.F.R. part 112 since at least September 16, 1998.

20. Based on a December 9, 2001 SPCC plan prepared for it, the 619 Main Facility had two 8,000 gallon aboveground motor oil tanks, one 6,000 gallon aboveground motor oil tank, one 6,000 gallon aboveground hydraulic oil tank, three 4,000 gallon aboveground motor oil tanks, one 4,000 gallon aboveground hydraulic oil tank, three 2,000 gallon aboveground motor oil tanks and two 2,000 gallon aboveground hydraulic oil tanks. Therefore, as of at least that date, the 619 Main Facility had an aggregate aboveground storage capacity of approximately 54,000 gallons, subjecting it to the requirements of the Oil Pollution Prevention regulations at 40 C.F.R. part 112 since at least December 9, 2001.

21. As of at least November 20, 2009, the 620 and 624 Main Facility had a multitude of 55-gallon drums of oil. As of at least that date, the 620 and 624 Main Facility had an aggregate aboveground storage capacity of approximately 10,500 gallons, subjecting it to the requirements of the Oil pollution Prevention regulations at 40 C.F.R. part 112.

22. Based on the allegations in the above paragraphs, Respondents are the owners or operators of non-transportation-related facilities engaged in storing, distributing, 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 are, therefore, subject to the Oil Pollution Prevention regulations at 40 C.F.R. part 112.

23. On November 20, 2009, a representative of EPA conducted an SPCC inspection of the Facilities. Based on the information provided at that time, the inspector determined that the 443 Main Facility had an SPCC Plan, dated July 25, 2000, which was outdated and failed to reflect the current conditions at the 443 Main Facility.

24. In addition, the EPA inspector found that the SPCC Plan for the 443 Main Facility was insufficient because, amongst other things, the Professional Engineer (“PE”) failed to adequately certify the SPCC plan.

25. Additionally, the EPA inspector found that the SPCC Plan for the 443 Main Facility had not been fully implemented, including, but not limited to, failure to routinely inspect the oil storage containers and failure to maintain training and inspection records.

26. The EPA inspector also determined that the 615 Main Facility had an SPCC plan, dated September 16, 1998 and amended December 12, 2001, which was outdated and failed to reflect the current conditions at the 615 Main Facility.

27. In addition, the EPA inspector found that the SPCC Plan for the 615 Main Facility was insufficient because, amongst other things, the PE failed to adequately certify the SPCC plan and the 615 Main Facility’s management failed to approve the December 12, 2001 amendment.

28. Additionally, the EPA inspector found that the SPCC Plan for the 615 Main Facility had not been fully implemented, including, but not limited to, inadequately impermeable containment for both the tank enclosure and the rack area, lack of fencing around both the tank enclosure and the rack area and failure to maintain training and inspection records.

29. The EPA inspector also determined that the 619 Main Facility had an SPCC plan, dated December 9, 2001, which was outdated and failed to reflect the current conditions at the 619 Main Facility.

30. In addition, the EPA inspector found that the SPCC Plan for the 619 Main Facility was insufficient because, amongst other things, the PE failed to adequately certify the SPCC plan

and the 619 Main Facility's management failed to approve the SPCC Plan.

31. Additionally, the EPA inspector found that the SPCC Plan for the 619 Main Facility had not been fully implemented, including, but not limited to, inadequate secondary containment, inadequate security on loading/unloading hoses and failure to maintain training and inspection records.

32. The EPA inspector additionally determined that the Respondents had failed to prepare an SPCC plan for the 620 and 624 Main Facility.

33. Pursuant to sections 308(a) and 311(m) of the Act, 33 U.S.C. §§ 1318(a) and 1321(m), on January 4, 2010, EPA issued an information request to Munce's Superior (the "308 Letter"), informing Munce's Superior that it did not have adequate and fully implemented SPCC plans for the 443, 615 and 619 Main Facilities as required by the Oil Pollution Prevention Regulations, and that Munce's Superior was required to submit a copy of a revised SPCC plan for those Facilities. The 308 Letter also informed Munce's Superior that the 620 and 624 Main Facility did not have an SPCC plan as required by the Oil Pollution Prevention Regulations, and that Munce's Superior was required to submit a copy of a new SPCC plan for that Facility. Finally, the 308 Letter informed Munce's Superior that if it could not be fully compliant within 30 days of Munce's Superior's receipt of the letter, it must submit a detailed schedule including a list of the issues to be fixed and the dates when the fixes will be completed and the facility would be fully compliant.

34. EPA's 308 Letter was sent certified mail and received and signed for by Munce's Superior's representative on January 7, 2010. Therefore, a response to the 308 Letter was due to

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EPA no later than February 9, 2010.

35. An EPA representative telephoned the Munce's Superior several times regarding the 308 Letter. As of this date, Munce's Superior has not submitted a response to the 308 Letter, nor has its owner returned phone messages EPA left with the company.

III. VIOLATIONS

Count I: Failure to Respond to a Request for Information under Section 308 of the CWA

36. Paragraphs 1 through 35 are incorporated by reference as if fully set forth herein.

37. Munce's Superior failed to respond to or otherwise provide the information requested by the 308 Letter within thirty (30) days of receipt, in violation of section 308 of the Act, 33 U.S.C. § 1318, or any time thereafter.

38. By failing to respond to the 308 Letter, Munce's Superior violated section 308 of the Act, 33 U.S.C. § 1318, at least through the date of this Complaint.

39. Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), authorizes EPA to assess administrative penalties for violations of section 308 of the Act, 33 U.S.C. § 1318.

40. Pursuant to section 309(g)(2)(B) of the Act and 40 C.F.R. § 19.4, Munce's Superior is liable for civil penalties up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

Count II: Failure to Maintain and Implement an SPCC Plan at the 443 Main Facility in

Violation of 40 C.F.R. § 112.3(a)

41. Paragraphs 1 through 40 are incorporated by reference as if fully set forth herein.

42. Forty C.F.R. § 112.3 requires that the owner or operator of an SPCC regulated

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facility prepare a written SPCC plan in accordance with 40 C.F.R. § 112.7 and other requirements of 40 C.F.R. Part 112, including the requirement to have the plan periodically reviewed and updated (40 C.F.R. § 112.5(b)), and available on-site for EPA review (40 C.F.R. § 112.3(e)).

43. Forty C.F.R. 112.3(a)(1) requires the owner or operator of a SPCC regulated facility that was in operation on or before August 16, 2002, to implement and maintain its Plan.

44. Respondents prepared an SPCC plan for the 443 Main Facility dated July 25, 2000 but failed to fully implement the plan, particularly regarding inspection and inspection records, as required by 40 C.F.R. §§ 112.7 and 112.8.

45. Respondents failed to adequately certify, amongst other things, that the 443 Main SPCC plan was prepared in accordance with good engineering practices.

46. Respondents failed to periodically update and review the 443 Main SPCC plan as required by 40 C.F.R. § 112.5(b).

47. Respondents failed to maintain a copy of the 443 Main SPCC plan on-site as required by 40 C.F.R. § 112.3(e).

48. Respondents failed to keep records of inspection, testing, and training at the 443 Main Facility as required by 40 C.F.R. §§ 112.7(e) and (f).

49. Based on the November 20, 2009 inspection of the 443 Main Facility, EPA determined that the Respondents have 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.

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50. Respondents' failure to maintain the SPCC plan for its 443 Main Facility, including their failure to fully implement the SPCC plan, in accordance with the requirements of 40 C.F.R. §§ 112.3, 112.5, 112.7 and 112.8, as described above, violated 40 C.F.R. § 112.3(a), and section 311(j) of the Act, 33 U.S.C. § 1321(j). Respondents have violated at least one of these requirements for each day for at least the past five years, for a total of 1,826 days of violation.¹

51. Pursuant to section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. § 19.4, Respondents are 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 for the period of March 15, 2004 through January 12, 2009, and \$16,000 per day up to a maximum of \$177,500 after January 12, 2009.

**Count III: Failure to Maintain and Implement an SPCC Plan at the 615 Main Facility in
Violation of 40 C.F.R. § 112.3(a)**

52. Paragraphs 1 through 51 are incorporated by reference as if fully set forth herein.

53. Respondents prepared an SPCC plan for the 615 Main Facility dated September 16, 1998 and updated December 12, 2001, but failed to fully implement the plan, particularly regarding adequate secondary containment, as required by 40 C.F.R. §§ 112.7 and 112.8.

54. Respondents failed to periodically update and review the 615 Main SPCC plan as required by 40 C.F.R. § 112.5(b).

¹EPA is not 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.

55. The 615 Main Facility lacked sufficiently impervious secondary containment for aboveground bulk storage and the loading rack such that discharged oil would be contained within the bermed area, as required by 40 C.F.R. §§ 112.7(c) and 112.8(c)(2).

56. The aboveground bulk storage at the 615 Main Facility does not have adequate security measures implemented as required by 40 C.F.R. § 112.7(g).

57. Respondents failed to keep records of inspection, testing, and training at the 615 Main Facility as required by 40 C.F.R. §§ 112.7(e) and (f).

58. Based on the November 20, 2009 inspection, EPA determined that the Respondents have 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 at the 615 Main Facility.

59. Respondents' failure to maintain the SPCC plan for the 615 Main Facility, including their failure to fully implement the SPCC plan, in accordance with the requirements of 40 C.F.R. §§ 112.3, 112.5, 112.7 and 112.8, as described above, violated 40 C.F.R. § 112.3(a), and section 311(j) of the Act, 33 U.S.C. § 1321(j). Respondents have violated at least one of these requirements for each day for at least the past five years, for a total of 1,826 days of violation.²

60. Pursuant to section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(j), and 40 C.F.R. § 19.4, Respondents are liable for civil penalties of up to \$11,000 per day for each day during

²EPA is not pursuing penalties for violations of 40 C.F.R. part 112 beyond the federal five year statute of limitations

which the violation continues, up to a maximum of \$157,500 for the period of March 15, 2004 through January 12, 2009 and \$16,000 per day up to a maximum of \$177,500 after January 12, 2009.

Count IV: Failure to Maintain and Implement an SPCC Plan at the 619 Main Facility in

Violation of 40 C.F.R. § 112.3(a)

61. Paragraphs 1 through 60 are incorporated by reference as if fully set forth herein.
62. Respondents prepared an SPCC plan for the 619 Main Facility dated December 9, 2001 but failed to fully implement the plan as required by 40 C.F.R. §§ 112.7 and 112.8.
63. Respondents failed to adequately certify, amongst other things, that the PE who prepared the 619 Main SPCC plan was familiar with the requirements of 40 C.F.R. § 112, that he had visited and examined the 619 Main Facility and that the 619 Main SPCC plan was prepared in accordance with good engineering practices.
64. Respondents have failed to obtain management approval of the 619 Main SPCC plan at a level of authority to commit the necessary resources to fully implement the plan as required by 40 C.F.R. § 112.3.
65. The loading/unloading of oil hoses at the 619 Main Facility have not been locked when not in service as required by 40 C.F.R. § 112.7(g).
66. Respondents failed to periodically update and review the 619 Main SPCC plan as required by 40 C.F.R. § 112.5(b).

found at 28 U.S.C. § 2462.

67. Respondents failed to maintain a copy of the 619 Main SPCC plan on-site and failed to provide the EPA inspector with a copy of the 619 Main SPCC plan for on-site review as required by 40 C.F.R. § 112.3(e).

68. Respondents failed to keep records of inspection, testing, and training at the 619 Main Facility as required by 40 C.F.R. §§ 112.7(e) and (f).

69. The 619 Main Facility lacked sufficiently impervious secondary containment for some of its aboveground bulk storage such that discharged oil would be contained within the bermed area, as required by 40 C.F.R. §§ 112.7(c) and 112.8(c)(2).

70. Based on the November 20, 2009 inspection, EPA determined that the Respondents have 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.

71. Respondents' failure to maintain the SPCC plan for its 619 Main Facility, including their failure to fully implement the SPCC plan, in accordance with the requirements of 40 C.F.R. §§ 112.3, 112.5, 112.7 and 112.8, as described above, violated 40 C.F.R. § 112.3(a), and section 311(j) of the Act, 33 U.S.C. § 1321(j). Respondents have violated at least one of these requirements for each day for at least the past five years, for a total of 1,826 days of violation.³

72. Pursuant to section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(j), and 40 C.F.R.

³EPA is not 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.

§ 19.4, Respondents are 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 for the period of March 15, 2004 through January 12, 2009 and \$16,000 per day up to a maximum of \$177,500 after January 12, 2009.

Count V: Failure to Prepare an SPCC Plan for the 620 and 625 Main Facility

in Violation of 40 C.F.R. § 112.3

73. Paragraphs 1 through 72 are incorporated by reference as if fully set forth herein.

74. Respondents have failed to prepare an SPCC plan for the 620 and 624 Main Facility in violation of 40 C.F.R. § 112.3 and section 311(j) of the Act, 33 U.S.C. § 1321(j). Respondent have violated this requirements for each day at least since the EPA inspected the 620 and 624 Main Facility on November 20, 2009.

75. Pursuant to section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(j), and 40 C.F.R. § 19.4, Respondents are 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 for the period of March 15, 2004 through January 12, 2009 and \$16,000 per day up to a maximum of \$177,500 after January 12, 2009.

IV. PROPOSED PENALTY

76. Based on the forgoing Findings of Violation, and pursuant to the authority of sections 309(g) and 311(b)(6)(B)(ii) of the Act, 33 U.S.C. §§ 1319(g) and 1321(b)(6)(B)(ii), and 40 C.F.R. § 19.4, and sections 309(g)(3) and 311(b)(8) of the Act, 33 U.S.C. §§ 1319(g)(3) and

1321(b)(8), the Complainant proposes that a Final Order assessing administrative penalties be issued against Respondents 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. In accordance with section 309(g)(3), for the violation of section 308 of the Act, the Complainant proposes that the penalty be assessed after taking into account the nature, circumstances, extent and gravity of the violation, the violator's ability to pay, prior history of violations, degree of culpability, economic benefit resulting from the violation and any other matters as justice may require. In accordance with 311(b)(8) of the Act, for the violation of section 311(j), the Complainant proposes that the penalty be assessed after 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.

77. Munce's Superior's violation of the information gathering provisions of section 308 of the Act alleged above represents a significant violation because, unless requested information is provided by the regulated community, the Agency cannot operate an effective oil pollution prevention program.

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78. Respondents' violation of the Oil Pollution Prevention regulations alleged above represent significant violations of the Act because either failure to prepare or failure to fully maintain and implement an adequate SPCC plan both leave 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

79. Respondents 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 their Answer to this Complaint. The procedures for any such hearing and for all proceedings in this action are set out in 40 C.F.R. part 22, two copies of which is enclosed with this Complaint.

80. 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, Respondents 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
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81. Respondents are 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:

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Tonia Bandrowicz, Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency – Region 1
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82. 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 Respondents have knowledge. If the Answer asserts no knowledge of a particular factual allegation, the allegation shall be deemed denied. Otherwise, the failures 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 Respondents wish to assert, challenges to any factual allegation in the Complaint, and any basis Respondents may have to oppose the Complainant's proposed penalty.

83. Following receipt of the Answer, a Presiding Officer will be assigned. The Presiding Officer will notify the parties of his or her assignment, and shall notify the parties of the time and place of further proceedings in the case.

VI. PUBLIC NOTICE

84. Pursuant to sections 309(g)(4) and 311(b)(6)(C) of the Act, 33 U.S.C. §§ 1319(g) and 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 Respondents. If a hearing is held on this matter, members of the public who submitted timely comments on this proceeding have the right under sections 309(g)(4) and 311(b)(6)(C) of the Act to be heard and present evidence at the hearing.

ADMINISTRATIVE COMPLAINT
In re Munce's Superior Petroleum Products, Inc. and Munce's Superior, Inc.
Docket No. CWA-01-2010-0040

US EPA, REGION 1
5 Post Office Square Suite 100
Boston, MA 02109-3912

Date: 06/17/10

Susan Studlien

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

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**In the Matter of Munce's Superior Petroleum Products, Inc.,
and Munce's Superior, Inc.
CWA-01-2010-0040**

CERTIFICATE OF SERVICE

I certify that the foregoing Compliant was transmitted 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 I
5 Post Office Square, Suite 100
Mail Code:
Boston, MA 02109-3912

Copy by certified mail,
return receipt requested:

Harold Munce, President
Munce's Superior Petroleum Products, Inc.
620 Main St.
Gorham, NH 03581

Dated: 6/21/10



Tonia Bandrowicz
U.S. EPA - Region I
One Congress Street, Suite 1100 (SEL)
Boston, MA 02114-2023
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