

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

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IN THE MATTER OF:)
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)
TRIRAM CONNECTICUT LLC)
171 Brownstone Avenue)
Portland, Connecticut 06480-1895)
)
)
Respondent.)
_____)

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

Proceeding to Assess Class II Civil Penalty Under
Clean Water Act Section 311 for SPCC and Oil
Spill Violations

Docket No. CWA-01-2009-0053

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 Triram Connecticut, LLC (“Triram” or “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), 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. 40 C.F.R. § 112.3(a) requires that the owner or operator of an onshore facility that became operational prior to August 16, 2002, must maintain its Spill Prevention Control and Countermeasure (“SPCC”) plan in accordance with 40 C.F.R. Part 112 (2002) from August 17, 2002, until the plan is amended to comply with the revised Oil Pollution Prevention regulations (40 C.F.R. Part 112), currently set to become effective on November 10, 2010,¹ and must implement its SPCC plan.

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.

¹ See 74 Fed. Reg. 29136 (June 19, 2009)

§ 110.1.

II. GENERAL ALLEGATIONS

7. Respondent is a limited liability corporation organized under the laws of Delaware with its headquarters located at 171 Brownstone Avenue, Portland, Connecticut, 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 an asphalt processing facility located at 171 Brownstone Avenue, Portland, Connecticut (“the facility”).

9. Respondent has owned or operated the facility since April 1997.

10. On January 29, 2009, David Fletcher, Triram’s Operations Manager, reported to the Connecticut Department of Environmental Protection (“CT DEP”) a #2 Fuel Oil spill from an above ground oil storage tank with a capacity of 13,818 gallons.

11. According to Respondent’s response to an Information Request issued by EPA, approximately 8,000 gallons of oil was released into secondary containment, and approximately 1,000 gallons of oil escaped secondary containment and entered the Connecticut River.

12. According to Respondent’s Integrated Contingency Plan (“ICP”)², the facility has a total oil storage capacity of 3,194,593 gallons.

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

² An ICP is a single plan that contains the elements required of both a Facility Response Plan (“FRP”) and SPCC

14. 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.

15. 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.

16. The facility is located adjacent to the Connecticut River. The Connecticut River flows into the Long Island Sound, which then flows into the Atlantic Ocean. Due to the location of the facility with respect to the Connecticut River and the topography of the area, the facility could reasonably be expected to discharge oil into the Connecticut River and the downstream bodies of water.

17. The Connecticut River, the Long Island Sound, and the Atlantic Ocean are “navigable waters” and are 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.

18. Based on the allegations in paragraphs 7 through 17 above, Respondent is the owner and operator of a non-transportation-related facility engaged in storing, 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 is, therefore, subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112.

19. EPA representatives conducted inspections of the facility to determine compliance with the Oil Pollution Prevention regulations on September 13, 2004, November 3, 2005, and August 3, 2009.

plan.

III. VIOLATIONS

Count I: Failure to Maintain and Implement an SPCC Plan in Violation of 40 C.F.R. § 112.3(a)

20. EPA determined based upon inspection results, Respondent's response to an EPA Information Request, and review of Respondent's ICP that it 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, the facility lacked sufficiently impervious secondary containment for 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); failed to provide adequate secondary containment for oil drums stored in the garage on the east side of Brownstone Avenue as required by 40 C.F.R. §§ 112.8(c)(11); failed to keep signed records for monthly inspections of the facility since April 4, 2005 and daily inspections of the facility since November 8, 2005 as required by the ICP and 40 C.F.R. § 112.7(e); and failed to conduct integrity testing of tanks 4, 5, 26 and 27 as required by 40 C.F.R. § 112.8(c)(6).

21. Respondent's failure to maintain and implement the SPCC plan for the facility in accordance with the requirements of 40 C.F.R. §§ 112.7 and 112.8, as described above, violated 40 C.F.R. § 112.3(a). Respondent has violated at least one of these requirements for each day for at least the past five years, for a total of at least 1,826 days of violation.³

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. Five years equals 1,826 days of violation.

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.

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, in particular the failure to ensure sufficiently impermeable secondary containment, resulted in the January 29, 2009 oil spill into the Connecticut River.

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:

Judy Lao-Ruiz, Acting Regional Hearing Clerk (RAA)
U.S. Environmental Protection Agency-Region 1
One Congress Street, Suite 1100
Boston, Massachusetts 02114-2023

26. 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:

Jeffrey Kopf, Senior Enforcement Counsel
Office of Environmental Stewardship (SEL)
U.S. Environmental Protection Agency – Region 1
One Congress Street, Suite 1100
Boston, Massachusetts 02114-2023

27. 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.

28. 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

29. 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.

Date: 10/23/09

Susan Studlien

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

In the Matter of Triram Connecticut, LLC
Docket No. CWA-01-2009-0053

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:

Judy Lao-Ruiz
Acting Regional Hearing Clerk
U.S. EPA, Region 1
One Congress Street (RAA)
Boston, MA 02114-2023

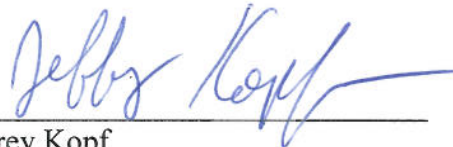
Copy and a copy of the
Part 22 Rules by certified mail,
return receipt requested:

David M. Fletcher, Operations Manager
Triram Connecticut, LLC
171 Brownstone Ave.
Portland, CT 06480-1895

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

CT Corporation
One Corporate Center
Floor 11
Hartford, CT 06103-3220

Dated: Oct 26 2009



Jeffrey Kopf
Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (SEL)
Boston, MA 02114-2023
Tel: (617) 918-1796
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1 Congress Street, Suite 1100 (SEL)
Boston, MA 02114-2023

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Judy Lao-Ruiz
Acting Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 1
One Congress Street, Suite 1100 (RCA)
Boston, MA 02114-2023

REG. CLERK
BY HAND

Re: In the Matter of Triram Connecticut, LLC,
Docket No. CWA-01-2009-0053

Dear Ms. Lao-Ruiz:

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,

Jeffrey Kopf
Senior Enforcement Counsel

Enclosure

cc: David M. Fletcher, Triram Connecticut, LLC
CT Corporation, Hartford, CT