



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1 Congress Street, Suite 1100 (SEL)
Boston, MA 02114-2023

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December 12, 2008

Wanda Santiago
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: In the Matter of: George T. Taylor & Son, Inc. d/b/a "Taylor Energy",
CWA-01-2009-0002

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,


Jeffrey Kopf
Senior Enforcement Counsel

Enclosure

cc: Thomas Taylor
Ellen M. Taylor

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED
2008 DEC 12 P 1:34

IN THE MATTER OF:

George T. Taylor & Son, Inc.
d/b/a "Taylor Energy"
152 Broad Brook Rd.
Broad Brook, Connecticut,

Respondent.

ADMINISTRATIVE COMPLAINT AND
NOTICE OF OPPORTUNITY TO
REQUEST HEARING

Proceeding to Assess Class II Civil Penalties New
Under Section 311 of the Clean Water Act
for Violations of the Oil Pollution Prevention
Regulations

Docket No. CWA-01-2009-0002

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," codified at 40 C.F.R. Part 22 ("Part 22"), Complainant hereby provides notice of its proposal to assess a civil penalty against George T. Taylor & Son, Inc., d/b/a "Taylor 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 FRP Regulations”) require FRP-regulated facilities to submit a facility response plan to the EPA Regional Administrator (40 C.F.R. § 112.20(a)), and to develop and implement a facility response training program and a drill/exercise program that satisfies the requirements of the regulations (40 C.F.R. § 112.21(a)).

II. GENERAL ALLEGATIONS

7. Respondent is a corporation organized under the laws of Connecticut located at 152 Broad Brook Rd., Broad Brook, Connecticut, and is, therefore, 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 oil storage and distribution facility located at 152 Broad Brook Rd., Broad Brook, Connecticut (“the Facility”).

9. The Facility has been in operation since 1963. Respondent has owned and operated the Facility as a fuel oil storage and distribution business since June 1998.

10. Respondent operated the Facility under the name “Hall & Muska, Inc.” until some time known more specifically by Respondent, in 2005.

11. Respondent has been operating the Facility d/b/a “Taylor Energy” since some time known more specifically by Respondent, in 2005.

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

13. Respondent’s Facility has an aggregate above-ground oil storage capacity of approximately 1,551,275 gallons.

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 on a slope, with two catch basins located behind the office at the

low elevation point of the property. During wet-weather events, rainwater flows into these basins and then flows via gravity through an underground pipe and discharges into Rustic Brook, directly adjacent to the property. Rustic Brook flows into Buckhorn Brook, which flows into the Scantic River, which flows into the Connecticut River, which flows into the Long Island Sound.

17. Rustic Brook, Buckhorn Brook, the Scantic River, the Connecticut River, and the Long Island Sound are “navigable waters of the United States” and are 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 its implementing regulation.

18. Therefore, due to the location of the Facility with respect to the topography of the area, the Facility could reasonably be expected to discharge oil in harmful quantities to navigable waters of the United States or adjoining shorelines.

19. 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 harmful quantities to navigable waters of the United States, Respondent is subject to the Spill Prevention Control and Countermeasure “SPCC” requirements of the Oil Pollution Prevention regulations at 40 C.F.R. Part 112.

20. 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 C.F.R. §§112.20 and 112.21.

21. 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

22. In April 2008, Respondent provided to EPA by mail a copy of the Facility's SPCC plan that was prepared by the Facility's previous operator, Hall & Muska, Inc. The SPCC plan was undated and was not stamped by a Professional Engineer.

23. Pursuant to 40 C.F.R. 112.20(h), the owner or operator of an FRP-regulated facility shall submit an FRP that addresses the elements listed in the FRP regulations.

24. In April 2008, Respondent provided to EPA by mail a copy of the Facility's FRP. The FRP was undated and did not contain all the elements required under the FRP regulations.

25. On June 12, 2008, an EPA On-Scene Coordinator conducted an inspection of Respondent's Facility.

III. VIOLATIONS

Count 1

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

26. At the time of the June 12, 2008 inspection, the SPCC plan for the facility was undated, was not stamped by a P.E., and was not fully implemented.

27. Forty C.F.R. § 112.3(a) requires that the owner or operator of an SPCC-regulated facility shall prepare and implement an SPCC plan that is in accordance with the requirements of

¹On July 17, 2002, EPA published a final rule that amended the Oil Pollution Prevention regulations (see 67 F.R. 47042) (the "2002 rule"). The 2002 rule became effective on August 16, 2002, and required a facility that was in operation on or before August 16, 2002, to make any necessary amendments to its SPCC plan to bring it into compliance with the new requirements in the 2002 rule. On several occasions, the most recent of which was May 16, 2007 (see 72 Fed. Reg. 27443), EPA issued final rules extending the dates by which a facility that was in compliance with the pre-2002 regulations had to amend its SPCC plan under the 2002 rule. These extensions did not, however, apply to facilities that were in operation prior to August 16, 2002 and not in compliance with the pre-2002 regulations.

40 C.F.R. § 112.7. Section 112.7 requires that an SPCC plan must be prepared in accordance with “good engineering practices” and include the specific items in 40 C.F.R. § 112.7. Forty C.F.R. § 112.8 contains additional requirements that apply to “onshore facilities.”

28. EPA determined upon review of Respondent’s SPCC plan and inspection of the Facility that Respondent failed to adequately provide for measures which would prevent the discharge of oil from reaching waters of the United States and failed to include all the items in 40 C.F.R. §§ 112.7 and 112.8. Therefore, the SPCC plan was not prepared and implemented in accordance with “good engineering practices.”

29. As of the date of filing this Complaint, Respondent was not in compliance with the requirements of 40 C.F.R. § 112.3(a).

30. Respondent’s failure to fully prepare and 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 has violated these requirements since it first acquired the facility in 1998 through the filing of this Complaint. For purposes of assessing a penalty, EPA alleges Respondent violated the Clean Water Act for a for a total of 1,826 days of violation.²

31. 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 prepared and implemented SPCC plan for the Facility to be a separate day of violation.

² EPA 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 1826 days of violation.

Count 2

**Failure to Review & Update the FRP
in Violation of 40 C.F.R. § 112.20(g)(3)**

32. Paragraphs 1 through 31 are incorporated herein by reference.

33. Pursuant to 40 C.F.R. § 112.20(g)(3), the owner or operator of an FRP-regulated facility shall review and update the FRP periodically to reflect changes at the facility.

34. On or about June 12, 2008, EPA reviewed Respondent's FRP and determined that it did not incorporate certain changes that had been made at the Facility as required by 40 C.F.R. § 112.20(g)(3).

35. Respondent had not revised the FRP to incorporate certain changes made at its Facility as of the filing of this Complaint.

36. Respondent's failure to revise its FRP to incorporate certain changes made at the Facility violated the requirements of 40 C.F.R. § 112.20(g)(3).

37. Respondent has violated these requirements since it first acquired the facility in 1998 through the filing of this Complaint. For purposes of assessing a penalty, EPA alleges Respondent violated the Clean Water Act for a total of 1,826 days of violation.³

38. Pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 CFR § 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 revised its FRP to incorporate certain changes made at its Facility a separate day of violation.

³ EPA 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 1826 days of violation.

Count 3

**Failure to Revise and Resubmit FRP
in Violation of 40 C.F.R. § 112.20(d)**

39. Paragraphs 1 through 38 are incorporated herein by reference.

40. The owner or operator of an FRP-regulated facility is required to revise and resubmit to the EPA Regional Administrator:

(a) within sixty days, revised portions of its facility response plan that are materially affected by each facility change that materially may affect the response to a worst case discharge (40 C.F.R. §112.20(d)(1)); and

(b) as they occur, a copy of any other changes to personnel, telephone number lists, or a change in the oil spill removal organization or organizations not resulting in a material change in support capabilities in the event of a worst case spill from the FRP-regulated facility (40 C.F.R. §112.20(d)(2)).

41. On June 12, 2008, EPA provided Respondent with a list of deficiencies noted with respect to Respondent's FRP.

42. From at least August 11, 2008, through the filing of this Complaint Respondent has failed to revise and resubmit to the EPA Regional Administrator the information referenced in subparagraph (a) and (b) above in violation of the requirements of 40 C.F.R. §112.20(d)(1) and (4) for a total of 124 days of violation.

43. 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

4 If there were a late submission in violation of §112.20(d), recite the deadline for the submission, and the date of the last submission.

to a maximum of \$157,500. EPA considers each day Respondent failed to revise and resubmit such information to the EPA Regional Administrator to be a separate day of violation.

Count 4

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

44. Paragraphs 1 through 43 are incorporated by reference.

45. Pursuant to 40 C.F.R. §112.21(a) and (c), 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.

46. Respondent failed to have developed and implemented an adequate facility response training program or a facility response drill/exercise program that satisfies the requirements of 40 C.F.R. Part 112.

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

48. Respondent has violated these requirements since it first acquired the facility in 1998 through the filing of this Complaint. For purposes of assessing a penalty EPA alleges Respondent violated the Clean Water Act for a total of 1,826 days of violation.⁵

49. 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 a facility response training program or a facility response

⁵ EPA 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 1826 days of violation.

drill/exercise program to be a separate day of violation.

IV. PROPOSED PENALTY FOR CWA VIOLATIONS

50. 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.

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

52. 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.

53. 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

54. 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 I
One Congress Street, Suite 1100
Boston, Massachusetts 02114-2023
Tel: 617-918-1796
Fax: 617-918-0796
Email: kopf.jeff@epa.gov

55. 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.

56. 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

57. 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

58. You may request an informal conference with Complainant's attorney, Jeffrey Kopf, 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.

59. If you have any questions concerning the settlement process, or wish to arrange for an informal conference, please contact Jeffrey Kopf, Senior Enforcement Counsel, at (617) 918-1796.

Date: 12-12-08

Susan Studlien, acting for

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

In the Matter of: George T. Taylor & Son, Inc. d/b/a "Taylor Energy",
Docket No. CWA-01-2009-0002

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
One Congress Street (RAA)
Boston, MA 02114-2023

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

Thomas A. Taylor, President
George T Taylor & Son, Inc.
152 Broad Brook Rd.
Broad Brook, CT 06016

Ellen M. Taylor, Registered Agent
George T. Taylor & Son, Inc.
154 Benson Hill Road
Dover Plains, NY 12522

Dated: Dec. 12, 2008



Jeffrey Kopf
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Office of Environmental Stewardship
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