

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

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**In The Matter of:** :  
: **ADMINISTRATIVE COMPLAINT**  
: **AND OPPORTUNITY TO REQUEST**  
: **HEARING AND CONFERENCE**  
:  
**Mid States Oil Refining Company,** : **Proceeding to Assess Class II**  
**LLC** : **Civil Penalties under Section**  
**5501 Pennington Avenue** : **311(b)(6)(B) of the Clean Water Act, as**  
**Baltimore, Maryland 21226,** : **Amended, 33 U.S.C. § 1321(b)(6)(B)**  
:  
**Respondent.** :  
:  
**5501 Pennington Avenue** : **Docket No. CWA-03-2011-0310**  
**Baltimore, Maryland 21226,** :  
:  
**606 Lewisville Road** :  
**Elkton, Maryland 21921,** :  
:  
**Facilities.** :  
:  
\_\_\_\_\_ :

**I. STATUTORY AUTHORITY**

1. This Administrative Complaint and Opportunity to Request Hearing and Conference ("Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B) of the Clean Water Act ("CWA"), as amended, 33 U.S.C. § 1321(b)(6)(B). The Administrator has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has delegated it to the Director of the Region's Hazardous Site Cleanup Division ("Complainant").

2. The Administrator of EPA has determined that Class II penalty proceedings for violations of Section 311(b)(3), 33 U.S.C. § 1321(b)(3), and regulations issued under Section

311(j), 33 U.S.C. § 1321(j), and other provisions of the CWA, shall be conducted in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits” (“Consolidated Rules”), 40 C.F.R. Part 22.

3. Therefore, pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), and in accordance with the Consolidated Rules, Complainant hereby requests that civil penalties be assessed against Mid States Oil Company, LLC, (“Respondent”), for its failure to:

(1) implement a facility response drills and exercises program at the Pennington Facility, in violation of 40 C.F.R. § 112.21; (2) implement a facility response training program at the Pennington Facility, in violation of 40 C.F.R. § 112.21(b); (3) retain records of a facility drills and exercises program and a facility response training program, in violation of 40 C.F.R. § 112.20(h)(8); (4) prepare Site Plan Diagrams required in the Facility Response Plan that include all aboveground storage tanks and storage areas for mobile portable containers at the Pennington Facility, in violation of 40 C.F.R. § 112.20(h)(9); (5) failure to prepare and certify a Spill Prevention Control and Countermeasure Plan at the Elkton Facility, in violation of 40 C.F.R. § 112.3; (6) provide appropriate secondary containment and/or diversionary structures or equipment at the Elkton Facility, in violation of 40 C.F.R. § 112.7(c); (7) create and retain records of required integrity testing for aboveground storage tanks and facility inspections at the Elkton Facility, in violation of 40 C.F.R. § 112.7(e)(8); and (8) conduct training of personnel in applicable federal pollution control laws, rules and regulations, in violation of 40 C.F.R. § 112.7(e)(10)(i).

## **Facility Response Plans Regulations**

4. In 1990, Congress amended Section 311 of the CWA by enacting the Oil Pollution Act of 1990 (“OPA”). Included in this amendment was Section 311(j)(5)(A), which required the President to promulgate regulations which would mitigate potential harm caused by vessels, offshore oil facilities, and onshore oil facilities that, because of their location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the United States or adjoining shorelines (“substantial harm facilities”). 33 U.S.C. § 1321(j)(5)(A). Congress directed the President to promulgate regulations requiring the owners or operators of substantial harm facilities to submit to the President plans for responding to worst case oil discharges and the substantial threat of such discharges known as Facility Response Plans (“FRPs”).

5. In Section 2(d)(1) of Executive Order 12777 (October 8, 1991), the President delegated to the Administrator of EPA the authority to promulgate such regulations under Section 311(j) of the CWA for non-transportation-related onshore facilities.

6. Pursuant to Section 311(c)(1)(C) and (j)(5)(A) of the CWA and the President’s delegation of authority, in 1994 EPA amended 40 C.F.R. Part 112 by promulgating oil spill response regulations (the “FRP Regulations”) applicable to facilities with a storage capacity of 1 million gallons of oil or greater, or 42,000 gallons of aboveground oil storage engaged in over-water transfers of oil to or from vessels.

7. Pursuant to the FRP Regulations, the owner or operator of a non-transportation-related onshore oil storage facility which, due to its location, could be reasonably expected to cause substantial harm to the environment by discharging oil into or on navigable waters or adjoining shorelines, is required to prepare and submit to EPA an FRP. 40 C.F.R. § 112.20.

8. Pursuant to Section 311(j)(5)(A) of the CWA, the EPA Administrator amended 40 C.F.R. Part 112 in 1994 by promulgating oil spill response regulations requiring non-transportation substantial harm facilities to, inter alia, develop and implement a facility response plan, an oil spill response training program, and a program of oil spill response drills and exercises. These regulations are codified at 40 C.F.R. §§ 112.20 and 112.21, and became effective on August 30, 1994.

9. Pursuant to 40 C.F.R. § 112.20(h)(4), owners or operators of onshore storage and distribution facilities must determine whether, because of the facility's storage capacity and location, that facility could reasonably be expected to cause substantial harm to the environment by discharging oil into or on navigable waters or adjoining shorelines pursuant to criteria established by EPA in 40 C.F.R. § 112.20(f)(1).

10. A facility is classified as a substantial harm facility if: (1) the facility transfers oil over water to or from vessels and has a total oil storage capacity greater than or equal to 42,000 gallons; or (2) the facility's total oil storage capacity is greater than or equal to 1,000,000 gallons and one of the following is true: (a) the facility does not have sufficient secondary containment to contain the capacity of the largest above-ground oil storage tank plus freeboard for precipitation within each storage area; (b) the facility is located at a distance (as calculated from the appropriate formula in 40 C.F.R. Part 112, Appendix C) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments; (c) the facility is located at a distance (as calculated from the appropriate formula in 40 C.F.R. Part 112, Appendix C) such that a discharge from the facility would shut down a public drinking water intake; or (d) the facility has had a reportable oil spill of at least 10,000 gallons within the last five years. 40 C.F.R. § 112.20(f)(1)(ii).

11. If a facility is determined to be a substantial harm facility under these criteria, the spill response regulations require the owner or operator of the facility to prepare and submit to EPA an FRP which details the facility's emergency plans for responding to an oil spill.

12. The FRP must include, among other things, the following elements: (1) a checklist and record of inspections for tanks, secondary containment, and response equipment; (2) a description of the drill/exercise program to be carried out under the response plan; (3) a description of the training program to be carried out under the response plan; and (4) logs of discharge prevention meetings, training sessions, and drills and exercises. 40 C.F.R. § 112.20(h)(8).

13. The FRP must also include a site plan and drainage plan diagrams. 40 C.F.R. § 112.20(h)(9).

#### **Drill and Exercise Requirements Under the FRP Program**

14. The spill response regulations require the owner or operator of a substantial harm facility to develop and implement a program of facility response drills and exercises for oil spill response. 40 C.F.R. § 112.21(a) and (c). A program of oil spill drills and exercises must follow either the National Preparedness for Response Exercise Program Guidelines ("PREP Guidelines") or an alternative program approved by the Administrator of the applicable EPA Region. 40 C.F.R. § 112.21(c).

#### **Training Requirements Under the Facility Response Plan**

15. The FRP Regulations require the facility owner or operator to develop a facility response training program to train those personnel involved in oil spill response activities. 40 C.F.R. § 112.21(b). The FRP Regulations recommend that the training program be based on the United States Coast Guard's Training Elements for Oil Spill Response. 40 C.F.R. § 112.21(b).

16. The required training program has several components: (1) facility personnel must be instructed in the procedures to respond to discharges of oil and in applicable oil spill response laws, rules and regulations; (2) training must be functional in nature according to job tasks for both supervisory and non-supervisory personnel; and (3) trainers must develop specific lesson plans on subject areas relevant to facility personnel involved in oil spill response and cleanup. 40 C.F.R. § 112.21(b)(1)-(3).

### **Site Plan Diagrams**

17. The FRP Regulations require the FRP to be prepared in accordance with the format of the model facility-specific response plan included in Appendix F to 40 C.F.R. Part 112, and must include a site plan diagram. 40 C.F.R. § 112.20(h) and (h)(9). The site plan diagrams must include and identify the following, among other things: the entire facility to scale; above and below ground bulk storage tanks; the contents and capacities of bulk oil storage tanks; the contents and capacity of oil drum storage areas; the contents and capacities of surface impoundments; process buildings; transfer areas; and secondary containment systems (location and capacity). 40 C.F.R. Part 112, Appendix F, Section 1.9.

### **Oil Pollution Prevention Regulations**

18. In Section 311(j)(1)(C) of the CWA, Congress required the President to promulgate regulations which would, among other things, establish procedures, methods, and other requirements for preventing discharges of oil from onshore facilities into navigable waters and for containing such discharges.

19. By Executive Order 12777, the President delegated the authority of Section 311(j)(1)(C) of the CWA to the Administrator of EPA. EPA promulgated the Oil Pollution

Prevention Regulations, 40 C.F.R. Part 112, 38 Fed. Reg. 34165, on December 11, 1973, which became effective on January 10, 1974 (“1974 Regulations”).

20. On July 17, 2002, EPA promulgated revisions to the 1974 Regulations, 67 Fed. Reg. 47042 (“2002 Regulations”). The 2002 Regulations became effective on August 16, 2002. On December 26, 2006, EPA promulgated revisions to the 2002 Regulations, 71 Fed. Reg. 77266 (“2006 Regulations”). The 2006 Regulations became effective on February 27, 2007. On December 5, 2008, EPA promulgated additional revisions to the 2002 Regulations, 73 Fed. Reg. 74236 (“2008 Regulations”). The 2008 Regulations became effective on January 14, 2010. Furthermore, on November 13, 2009, EPA promulgated revisions to the 2008 Regulations, 74 Fed. Reg. 58784 (“2009 Regulations”). The effective date of the 2009 Regulations is January 14, 2010. The Oil Pollution Prevention Regulations, including the 1974 Regulations and revisions as set forth in the 2002, 2006, 2008, and 2009 Regulations, are collectively referred to herein as the “Regulations.”

21. Pursuant to 40 C.F.R. § 112.3(a)(1) (2006), facilities in operation prior to August, 16, 2002 are required to maintain their Spill Prevention, Control and Countermeasure (“SPCC”) plans as required by the 1974 Regulations. Accordingly, for purposes of this Complaint, unless otherwise noted, regulatory requirements regarding SPCC requirements cited herein refer to the 1974 Regulations.

22. The Regulations, 40 C.F.R. Part 112, which implement Section 311(j) of the CWA, 33 U.S.C. § 1321(j), set forth procedures, methods, and requirements to prevent the discharge of oil from non-transportation-related facilities into or upon the navigable waters of the United States and adjoining shorelines in such quantities that may be harmful to the public health or welfare or to the environment. 40 C.F.R. § 112.1(a).

23. The Regulations apply to owners or operators of non-transportation-related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, or consuming oil or oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines. 40 C.F.R. § 112.1(b). Such facilities are referred to as “Part 112 Facilities.” The Regulations set forth procedures, methods and requirements to prevent the discharge of oil from Part 112 Facilities into or upon the navigable waters of the United States and adjoining shorelines in such quantities that, as determined by regulation, may be harmful to the public health or welfare or to the environment.

24. Provisions set forth in the Regulations that pertain to the subject matter of this Complaint include: Section 112.3 (Requirement to prepare and implement a Spill Prevention, Control and Countermeasure (“SPCC”) Plan); and Section 112.7 (General requirements for SPCC Plans).

#### **Prepare SPCC Plans**

25. The Regulations require owners and operators of onshore and offshore facilities becoming operational on or before the effective date of the regulations (January 10, 1974), that could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, to prepare SPCC Plans not later than July 10, 1974, and to implement those plans as soon as possible but not later than January 10, 1975. 40 C.F.R. § 112.3(a). In addition, The Regulations require owners and operators of onshore and offshore facilities becoming operational after the effective date of the regulations (January 10, 1974), that could reasonably be expected to discharge oil in harmful quantities into or upon the



navigable waters of the United States or adjoining shorelines, to prepare SPCC Plans not later than six months after the facilities become operational. 40 C.F.R. § 112.3(b).

26. Section 112.3(b) of the 1974 Regulations requires owners or operators of onshore and offshore facilities becoming operational after January 10, 1974, that could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, to prepare SPCC Plans no later than six months after the facilities become operational.

### **Secondary Containment**

27. The Regulations require the SPCC plan to include appropriate containment and/or diversionary structures or equipment to prevent discharged oil from reaching a navigable water course. 40 C.F.R. § 112.7(c). The Regulations specify that one of the following preventive systems or its equivalent should be used as a minimum for onshore facilities:

- (i) Dikes, berms or retaining walls sufficiently impervious to contain spilled oil;
- (ii) Curbing;
- (iii) Culverting, gutters or other drainage systems;
- (iv) Weirs, booms or other barriers;
- (v) Spill diversion ponds;
- (vi) Retention ponds;
- (vii) Sorbent materials.

40 C.F.R. § 112.7(c).

### **Inspections, Tests and Records**

28. The Regulations require bulk storage above-ground tanks be subject to periodic integrity testing, that comparison records should be kept where appropriate, and that tank supports and foundations should be included in these inspections. 40 C.F.R. § 112.7(e)(2)(vi). In addition, the outside of the tank should frequently be observed by operating personnel for

signs of deterioration, leaks which might cause a spill, or accumulation of oil inside diked areas. 40 C.F.R. § 112.7(e)(2)(vi).

29. Written procedures and a record of the inspections, signed by the appropriate supervisor or inspector, should be made part of the SPCC Plan and maintained for a period of at least three (3) years. 40 C.F.R. § 112.7(e)(8).

### **Training**

30. Section 112.7(e)(10) of the Regulations requires owners and operators to instruct personnel in the operation and maintenance of equipment to prevent the discharge of oil and applicable pollution control laws, rules and regulations, to have a designated person who is accountable for oil spill prevention and who reports to line management, and to schedule and conduct spill prevention briefings for their operating personnel at intervals frequent enough to assure adequate understanding of the SPCC Plan for that facility. 40 C.F.R. § 112.7(e)(10).

### **Relevant Definitions**

31. “Discharge” is defined at Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), and 40 C.F.R. § 112.2, as any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of oil other than federally permitted discharges pursuant to a permit under 33 U.S.C. § 1342.

32. “Harmful quantity” is defined at 40 C.F.R. § 110.3(b) as discharges that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

33. “Navigable waters” is defined at 40 C.F.R. § 110.1 and 40 C.F.R. § 112.2 and .20, and includes “the waters of the United States, including the territorial seas.”

34. “Non-transportation-related facility” is defined at 40 C.F.R. Part 112, Appendix A (*Memorandum of Understanding between the Secretary of Transportation and the Administrator of the Environmental Protection Agency*, initially published in 36 Fed. Reg. 24,080 (Dec. 18, 1971)), and incorporated by reference at 40 C.F.R. § 112.2, as oil drilling, producing, refining and storage facilities.

35. “Oil” is defined at Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), as oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredge spoil.

36. “Onshore facility” is defined at Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2, in relevant part, as “any facility . . . located in, on, or under any land within the United States, other than submerged land,” which is not a transportation-related facility.

37. “Owner or operator” is defined at Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2 as, *inter alia*, any person owning or operating an onshore facility or offshore facility.

38. “Person” is defined at Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2 as any individual, firm, corporation, or partnership.

39. The definition of “non-transportation-related facility,” found in 40 C.F.R. Part 112, Appendix A, and incorporated by reference at 40 C.F.R. § 112.2, includes oil drilling, producing, refining and storage facilities.

#### **Civil Penalty Authority**

40. Section 311(b)(6)(A) of the CWA provides that “[a]ny owner, operator or person in charge of any . . . onshore facility . . . who fails or refuses to comply with any regulation

issued under subsection (j) of this section . . . may be assessed a class I or class II penalty . . . .” 33 U.S.C. § 1321(b)(6)(A). The amount of a Class II penalty may not exceed \$10,000 per day for each day during which the violation continues, with the maximum amount not to exceed \$125,000. 33 U.S.C. § 1321(b)(6)(B)(ii). The Civil Monetary Penalty Inflation Adjustment Rule has increased this penalty to \$11,000 per day, with a maximum of \$157,500 for violations occurring between March 15, 2004 and January 12, 2009, and to \$16,000 per day, with a maximum of \$177,500 for violations occurring after January 19, 2009. 40 C.F.R. § 19.4.

## **II. GENERAL ALLEGATIONS**

41. Respondent is a limited liability company organized under the laws of the State of Maryland with its principal place of business located at 5501 Pennington Avenue in Baltimore, Maryland.

42. Respondent owns and operates a place of business operating under Standard Industrial Classification (“SIC”) code 5171 (Petroleum Bulk Storage and Terminals) located at 5501 Pennington Avenue, in Baltimore, Maryland (hereafter referred to as the “Pennington Facility”).

43. Respondent owns and operates a place of business operating under SIC code 4953 (Refuse Systems (Materials Recovery Facility)) located at 606 Lewisville Road, in Elkton, Maryland (hereafter referred to as “Elkton Facility”).

44. Respondent is a person within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

45. Respondent is the owner and operator, within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2 of the Pennington Facility, which is an onshore facility as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40

C.F.R. § 112.2, consisting of aboveground storage tanks (“ASTs”) with a capacity of approximately 7,800,000 gallons.

46. Respondent is the owner and operator, within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of the Elkton Facility, which is an onshore facility as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2, consisting of ASTs with an approximate total capacity of 91,375 gallons.

47. Pursuant to 40 C.F.R. § 112.2, Respondent is engaged in producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products at the Pennington Facility and the Elkton Facility.

48. Respondent acquired the Pennington Facility in or around 2004, and commenced operations as an oil recycling, storage and distribution facility in or around July 2005.

49. The Pennington Facility has had more than 1,000,000 gallons of oil storage capacity since April 2009.

50. Respondent acquired the Elkton Facility in or around 1997, and commenced operations as an oil recycling, storage and distribution facility in or around 1997.

51. Based on information and belief, from 2009 to the present, Respondent has received monthly oil shipments at the Pennington Facility by barge.

52. The Pennington Facility is both a “non-transportation-related facility” and “transportation-related facility” under the definitions incorporated by reference at 40 C.F.R. § 112.2, set forth in Appendix A thereto and published at 36 Fed. Reg. 24,080 (Dec. 18, 1971).

53. The Elkton Facility is a “non-transportation-related facility” under the definition incorporated by reference at 40 C.F.R. § 112.2, set forth in Appendix A thereto and published at 36 Fed. Reg. 24,080 (Dec. 18, 1971).

54. The Pennington Facility and the Elkton Facility are each an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

55. The Pennington Facility is located on Baltimore Harbor on the banks of the Cabin Branch tributary to Curtis Creek, which flows to Curtis Bay and then to the Patapsco River.

56. The Curtis Creek is a “navigable water,” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. §§ 110.1 and 112.2. The Pennington Facility is located near a wetland, a sensitive environment, at the entrance to the Cabin Branch tributary at Ferry Point, and crab habitats, waterfowl habitat, waterfowl and wading bird habitat, and anadromous and estuarine fish nurseries.

57. The Pennington Facility is located at a distance such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments.

58. Due to its location, the Pennington Facility could reasonably be expected to discharge oil in harmful quantities, as defined by 40 C.F.R. § 110.3, into or upon a navigable water of the United States or its adjoining shoreline.

59. Due to its oil storage capacity and location, the Pennington Facility could reasonably be expected to cause substantial harm to the environment, within the meaning of Section 311(j)(5)(B)(iii) of the CWA, 33 U.S.C. § 1321(j)(5)(B)(iii), as determined by evaluating the criteria in 40 C.F.R. § 112.20(f)(1) (2008), by discharging oil into or on navigable waters or adjoining shorelines.

60. The Elkton Facility is located 2,000 feet from an unnamed tributary to the Big Elk Creek, which flows into the Elk River.

61. The Big Elk Creek and the Elk River are “navigable waters,” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. §§ 110.1 and 112.2.

62. Due to its location, the Elkton Facility could reasonably be expected to discharge oil in harmful quantities, as defined by 40 C.F.R. § 110.3, into or upon a navigable water of the United States or its adjoining shoreline.

### **III. COUNT I - INADEQUATE DRILLS AND EXERCISES – PENNINGTON FACILITY**

63. The allegations in Paragraphs 1 through 62 are incorporated by reference as if fully set forth herein.

64. Pursuant to Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), and 40 C.F.R. § 112.1 and 40 C.F.R. § 112.20 (2008), since March 24, 2009, the Pennington Facility has been subject to the FRP submission requirements of 40 C.F.R. § 112.20.

65. Respondent submitted its FRP to EPA on April 24, 2008 and was approved by EPA in or around July 18, 2008 (hereinafter the “Pennington FRP”).

66. With respect to drills and exercises, the Pennington FRP includes the following statement:

The Mid States Oil Refining Company . . . has entered into an Agreement with Clean Ventures to provide emergency response capability. As part of that agreement . . . Mid States Oil Refining Company . . . will participate in Clean Venture organized drills and exercises. These drills and exercises will begin upon operation of the facility, in accordance with the guidelines established by National Preparedness for Response Exercise Program (PRP).

The drills and exercises are conducted both internally (once a quarter) and externally. The external drills and exercises are conducted with the cooperation of the South Baltimore Industrial Mutual Aid Program, with which . . . Mid States Oil Refining Company . . . has recently become affiliated.

All exercise records are maintained at the facility for three (3) years and are available for inspection by the USCG by request.

Pennington FRP at 63.

67. The Pennington FRP includes a number of blank forms, entitled “Qualified Individual Notification Drill Logs,” “Spill Management Team Tabletop Exercise Logs,” “Discharge Prevention Meeting Logs,” and “Response Equipment Testing and Deployment Drill Log.”

68. EPA inspected the Pennington Facility on October 28-29, 2009 (hereafter “the Pennington Inspection”).

69. During the Inspection and in communications with EPA after the Inspection, Respondent was unable to demonstrate that it had adequately developed and implemented its approved response drills and exercises program, including the required qualified individual notifications, the tabletop exercises, or the equipment deployments, in accordance with its approved FRP.

70. Respondent failed to implement a program of facility response drills and exercises for oil spill response as required by 40 C.F.R. §§ 112.21(a) and 112.21(c) that followed either the National Preparedness for Response Exercise Guidelines (“PREP Guidelines”) or an alternative program approved by the Administrator of the applicable EPA Region in violation of 40 C.F.R. §§ 112.21(a) and 112.21(c), and, therefore, Respondent is subject to civil penalties of up to \$16,000.00 per day for this violation up to a maximum of \$177,500.00, pursuant to Section 311(b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(B), and 40 C.F.R. Part 19.



**IV. COUNT II - INADEQUATE TRAINING PROGRAM -  
PENNINGTON FACILITY**

71. The allegations in Paragraphs 1 through 70 are incorporated by reference as if fully set forth herein.

72. The Pennington FRP lists the minimum training and expertise required for workers who perform emergency response, including incident commanders, those workers undertaking “defensive response,” those workers who “initiate response,” and those workers in “skilled response” roles. Pennington FRP, at 66. The Pennington FRP provides that the worker who performs as “incident commander” must have 24 hours of initial emergency response training, and annual refresher training and an annual demonstration of competency. The workers who perform a “defensive response” must have 8 hours of initial emergency response training and annual refresher training or an annual demonstration of competency. The workers who “initiate response” must have sufficient hours of training to demonstrate competency, annual refresher training including demonstration of competency, and additional training for post emergency cleanup activities involving hazardous substances. Workers acting as “skilled support” must attend spill site briefings. Pennington FRP, at 66.

73. During the Pennington Inspection and in communications with EPA after the Pennington Inspection, Respondent was unable to demonstrate that it had implemented the required training program for the various worker categories involved in emergency response in accordance with the Pennington FRP, as required by 40 C.F.R. § 112.21(b).

74. Respondent’s failure to implement the required training program is a violation of 40 C.F.R. § 112.21(b) and, therefore, Respondent is subject to civil penalties of up to \$16,000.00

per day for this violation up to a maximum of \$177,500.00, pursuant to section 311(b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(B), and 40 C.F.R. Part 19.

**V. COUNT III- FAILURE TO MAINTAIN RECORDS  
- PENNINGTON FACILITY**

75. The allegations in Paragraphs 1 through 74 are incorporated by reference as if fully set forth herein.

76. At the Pennington Inspection, Respondent was unable to produce logs of training sessions and drills and exercises sufficient to demonstrate compliance with the Pennington FRP for the year 2009, as required by the Pennington FRP and 40 C.F.R. § 112.20(h)(8)(iv).

77. Respondent's failure to retain records of training and drills and exercises in accordance with the Pennington FRP is a violation of 40 C.F.R. § 112.20(h)(8), and, therefore, Respondent is subject to civil penalties of up to \$16,000.00 per day for this violation up to a maximum of \$177,500.00, pursuant to section 311(b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(B), and 40 C.F.R. Part 19.

**VI. COUNT IV - INADEQUATE SITE PLAN DIAGRAMS IN FRP -  
PENNINGTON FACILITY**

78. The allegations in Paragraphs 1 through 77 are incorporated by reference as if fully set forth herein.

79. During the Pennington Inspection, inspectors observed the presence of numerous aboveground storage tanks containing used oil and storage areas for mobile containers (totes) and drums.

80. The site plan diagram in the Pennington FRP did not include approximately fourteen aboveground storage tanks containing used oil observed during the Pennington Inspection, as required by 40 C.F.R. § 112.20(h)(9).

81. The site plan diagram in the Pennington FRP did not include two storage areas for mobile containers and drums observed during the Pennington Inspection, as required by 40 C.F.R. § 112.20(h)(9).

82. During the Pennington Inspection, Pennington Facility personnel indicated that the storage areas for the mobile containers and drums had been used consistently at the Pennington Facility.

83. Respondent's failure to prepare a complete and accurate Site Plan is a violation of 40 C.F.R. § 112.20(h)(9), and, therefore, Respondent is subject to civil penalties of up to \$16,000.00 per day for this violation up to a maximum of \$177,500.00, pursuant to section 311(b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(B), and 40 C.F.R. Part 19.

**VII. COUNT V – FAILURE TO PREPARE AND CERTIFY AN SPCC PLAN – ELKTON FACILITY**

84. The allegations in Paragraphs 1 through 83 are incorporated by reference as if fully set forth herein.

85. EPA inspected the Elkton Facility on April 20, 2010 (hereafter “the Elkton Inspection”).

86. The Elkton Facility has an aggregate aboveground oil storage capacity exceeding 1,320 gallons.

87. During the Elkton Inspection and in communications with EPA after the Elkton Inspection, Respondent was unable to demonstrate that it had prepared or certified an SPCC Plan at the Elkton Facility in accordance with the Regulations, as required by 40 C.F.R. § 112.3.

88. Respondent's failure to prepare and certify an SPCC Plan at the Elkton Facility is a violation of 40 C.F.R. § 112.3, and, therefore, Respondent is subject to civil penalties of up to \$16,000.00 per day for this violation up to a maximum of \$177,500.00, pursuant to section 311(b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(B), and 40 C.F.R. Part 19.

#### **VIII. COUNT VI – FAILURE TO HAVE ADEQUATE SECONDARY CONTAINMENT– ELKTON FACILITY**

89. The allegations in Paragraphs 1 through 88 are incorporated herein as if fully set forth herein.

90. Section 112.7(c) of the Regulations, 40 C.F.R. § 112.7(c), requires facilities to install appropriate containment systems or diversionary structures to prevent the discharge of oil into navigable waters or onto adjacent shorelines.

91. During the Elkton Inspection, EPA inspectors observed that the unloading area for trucks at the Elkton Facility that did not have any secondary containment or diversionary structures to prevent discharged oil from reaching a navigable water, as required by 40 C.F.R. § 112.7(c).

92. During the Elkton Inspection, EPA inspectors observed a 275-gallon aboveground oil storage tank at the Elkton Facility that did not have any secondary containment or diversionary structures to prevent discharged oil from reaching a navigable water, as required by 40 C.F.R. § 112.7(c).

93. Respondent's failure to provide appropriate containment and/or diversionary structures for its storage tank and its loading area at the Elkton Facility is a violation of 40 C.F.R. § 112.7(c) and, therefore, Respondent is subject to civil penalties of up to \$16,000.00 per day for this violation up to a maximum of \$177,500.00, pursuant to section 311(b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(B), and 40 C.F.R. Part 19.

**VIII. COUNT VII – FAILURE TO IMPLEMENT TRAINING REQUIREMENTS  
– ELKTON FACILITY**

94. The allegations in Paragraphs 1 through 93 are incorporated herein as if fully set forth herein.

95. During the Elkton Inspection, Facility Operator Ron McCracken told EPA inspectors that he received on-the-job training from a former employee but did not receive any formal training.

96. In EPA's interview of Mr. McCracken after the inspection, Mr. McCracken told EPA inspectors that he also received on-the-job training from General Manager Marcus Dent.

97. In EPA's interview with Mr. McCracken after the inspection, Mr. McCracken was not familiar with an SPCC Plan in existence at the Elkton Facility at the time of the Elkton Inspection.

98. At the Elkton Inspection, and in communications with EPA after the Elkton Inspection, Respondent was unable to demonstrate that it had conducted a training program at the Elkton Facility to instruct personnel in the applicable Federal pollution control laws, rules and regulations, as required by 40 C.F.R. § 112.7(e)(10).

99. Respondent's failure to provide conduct an adequate training program at the Elkton Facility is a violation of 40 C.F.R. § 112.7(e)(10) and, therefore, Respondent is subject to

civil penalties of up to \$16,000.00 per day for this violation up to a maximum of \$177,500.00, pursuant to section 311(b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(B), and 40 C.F.R. Part 19.

**IX. COUNT VIII – INADEQUATE RECORDS AND INSPECTIONS – ELKTON FACILITY**

100. The allegations in Paragraphs 1 through 99 are incorporated herein as if fully set forth herein.

101. During the Elkton Inspection, Facility Operator Ron McCracken told EPA inspectors that he conducted daily visual inspections of the facility, including its aboveground tanks, but kept no records of such inspections.

102. During the Elkton Inspection, the Respondent was unable to produce any records of the integrity tests or comparison records of bulk aboveground storage tank inspections required by § 112.7(e)(2)(vi).

103. During the Elkton Inspection, the Respondent was unable to produce any records of the required facility inspections at the Elkton Facility, as required by 40 C.F.R. § 112.7(e)(8).

104. Respondent failed to generate and retain records of integrity tests and facility inspections in violation of 40 C.F.R. § 112.7(e)(8), and, therefore, Respondent is subject to civil penalties of up to \$16,000.00 per day per violation up to a maximum of \$177,500.00, pursuant to section 311(b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(B), and 40 C.F.R. Part 19.

**IX. PROPOSED PENALTY**

105. Based on the foregoing allegations, and pursuant to the authority of Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), the Complainant proposes that the Regional Administrator assess administrative penalties against the Respondent in the amount of

\$34,033.00 for Counts I through IV and \$33,458.00 for Counts V through VIII. The total proposed penalty is \$67,491.00.

106. The proposed penalty for Counts I through VIII, totaling \$67,491.00, was determined after taking into account the factors identified at Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), including: the seriousness of the violation; the economic benefit to the violator 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 violation; the economic impact of the penalty on the violator; and any other factors as justice may require.

107. The proposed penalty may be adjusted by Complainant if the Respondent establishes a bona fide issue of an inability to pay or other defenses relevant to the appropriate amount of the proposed penalties.

**X. ANSWER TO THE ADMINISTRATIVE COMPLAINT AND OPPORTUNITY TO REQUEST A HEARING**

108. Pursuant to Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), and Section 22.15(c) of the Consolidated Rules, the Respondent may request a hearing. The procedures for the hearing, if one is held, are set out in the Consolidated Rules.

109. If the Respondent contests any material fact upon which the Complaint is based; contends that the proposed penalties are inappropriate; or contends that it is entitled to judgment as a matter of law, it shall file an original and one copy of a written answer to the Complaint (“Answer”) with the Regional Hearing Clerk and shall serve copies of its Answer on all other parties. Any Answer to the Complaint must be filed within thirty (30) days after service of this Complaint with:

Lydia Guy  
Regional Hearing Clerk (3RC00)  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

The Respondent must also provide a copy of its Answer to the attorney representing EPA in this matter at the following address:

Cynthia T. Weiss  
Senior Assistant Regional Counsel (3RC42)  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-2659

110. The Respondent's Answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with regard to which Respondent has knowledge. Where Respondent has no knowledge of a particular factual allegation, Respondent shall so state and the allegation shall be deemed denied. Failure to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation. Respondent's Answer shall also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) whether a hearing is requested.

111. If Respondent fails to submit an Answer within thirty (30) days of receipt of this Administrative Complaint, and the case is not otherwise disposed of through settlement, Respondent may be found in default. For purposes of this action, a default constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing to contest such factual allegations.



## **XI. PUBLIC NOTICE**

112. Pursuant to Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), in the event of the proposed settlement of this matter, including quick resolution pursuant to Section IX below, the Complainant will provide public notice of and reasonable opportunity to comment on the proposed issuance of a Final Order assessing administrative penalties against the Respondent. If a hearing is held on this matter, members of the public who submitted timely comments on this penalty proposal shall have the right under Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), to be heard and present evidence at the hearing.

## **XII. SETTLEMENT AND QUICK RESOLUTION**

113. In accordance with Section 22.18(a) of the Consolidated Rules of Practice, the Respondent may resolve this proceeding at any time by either: (1) paying the full penalty proposed in Paragraph 105; or (2) filing a written statement with the Regional Hearing Clerk at the address provided above agreeing to pay, and subsequently paying within (sixty) 60 days of Respondent's receipt of this Complaint, the full penalty proposed in Paragraph 105. If Respondent pays or agrees to pay within sixty (60) days the specific penalty proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to the Consolidated Rules of Practice, no Answer need be filed.

114. If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving this Complaint, stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement

need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and a copy shall be provided to Cynthia T. Weiss (3RC42), Senior Assistant Regional Counsel, at the address below. Within sixty (60) days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty in accordance with the instructions provided in Paragraph 117.

115. Failure to make such payment within sixty (60) days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.

116. In accordance with 40 C.F.R. § 22.18(a)(3), upon receipt of payment in full, the Regional Judicial Officer or Regional Administrator shall issue a Final Order. Payment by Respondent shall constitute a waiver of Respondent's right to contest the allegations contained in this Complaint and to appeal the final order.

117. Payment shall be made by a cashier's or certified check, or by an electronic funds transfer ("EFT"). If paying by check, the Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF - 311." If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

If the Respondent sends payment by a private delivery service, the payment shall be addressed to:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Attn: Natalie Pearson (314/418-4087)

If paying by EFT, the Respondent shall make the transfer to:

Federal Reserve Bank of New York  
ABA 021030004  
Account 68010727  
33 Liberty Street  
New York, NY 10045

If paying by EFT, field tag 4200 of the Fedwire message shall read: (D 68010727 Environmental Protection Agency).

In the case of an international transfer of funds, the Respondent shall use SWIFT address FRNYUS33.

If paying through the Department of Treasury's Online Payment system, please access [www.pay.gov](http://www.pay.gov), enter sfo 1.1 in the search field. Open the form and complete the required fields and make the payment. Note that the type of payment is "civil penalty," the docket number "CWA-03-2011-0310" should be included in the "Court Order # or Bill #" field and 3 should be included as the Region number.

If paying by check, the Respondent shall note on the penalty payment check the title and docket number of this case. The Respondent shall submit a copy of the check (or, in the case of an EFT transfer, a copy of the EFT confirmation) to the following person:

Lydia Guy  
Regional Hearing Clerk (3RC00)  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

The Respondent must also provide a copy of its check to the attorney representing EPA in this matter at the following address:

Cynthia T. Weiss  
Senior Assistant Regional Counsel (3RC42)  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-2659

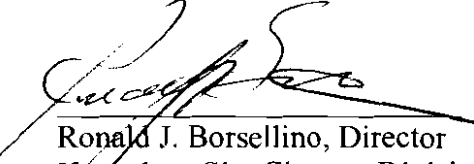
### **XIII. EX PARTE COMMUNICATIONS**

118. The following EPA offices, and the staffs thereof, are designated as the trial staff to represent EPA as a party in this case: the Region III Office of Regional Counsel; the Region III Hazardous Site Cleanup Division; the Office of the EPA Assistant Administrator for Solid Waste and Emergency Response; and the Office of the EPA Assistant Administrator for Enforcement and Compliance Assurance. Please be advised that, pursuant to Section 22.8 of the Consolidated Rules, from the date of this Complaint until the final Agency decision in this case, the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, the Presiding Officer, or any person who is likely to advise these officials on any decision in the proceeding, shall not have any ex parte communication about the merits of the proceeding with the Respondent, a representative of Respondent, or any person outside EPA having an interest in the proceeding, or with any EPA staff member who performs a prosecutorial or investigative function in this proceeding or a factually related proceeding. Any communication addressed to the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party, shall be regarded as argument made in the proceeding, and shall be served upon all other parties.

#### **XIV. INFORMAL CONFERENCE**

119. Respondent may request an informal conference concerning the alleged violations and the amount of the proposed penalty. The request for an informal conference does not extend the thirty (30) day period in which the Respondent must submit its written Answer to preserve the right to a hearing. To request an informal conference relating to this Administrative Complaint, Respondent should contact Cynthia T. Weiss, Senior Assistant Regional Counsel, at (215) 814-2659.

Signed this 29 day of September, 2011.



Ronald J. Borsellino, Director  
Hazardous Site Cleanup Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

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In The Matter of:

Mid States Oil Refining Company, :  
LLC :  
5501 Pennington Avenue :  
Baltimore, Maryland 21226, :

Respondent. :

5501 Pennington Avenue :  
Baltimore, Maryland 21226, :

606 Lewisville Road :  
Elkton, Maryland 21921, :

Facilities. :

Proceeding to Assess Class II  
Civil Penalties Under Section  
311(b)(6)(B) of the Clean Water Act, as  
amended, 33 U.S.C. § 1321(b)(6)(B).

Docket No. CWA-03-2011-0310

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of Complainant's, the United States Environmental Protection Agency's, Administrative Complaint and Notice of Opportunity for a Hearing, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true and correct copies of the Administrative Complaint and Notice of Opportunity for a Hearing, along with its enclosures and/or attachments, were sent by certified mail, return receipt requested, to:

Mr. Alan Bock, President  
Mid States Oil Refining Company, LLC  
5501 Pennington Avenue  
Baltimore, Maryland 21226

SEP 29 2011

Date



Cynthia T. Weiss (3RC42)  
Senior Assistant Regional Counsel  
Counsel for Complainant  
(215) 814-2659