



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1  
1 CONGRESS STREET, SUITE 1100  
BOSTON, MASSACHUSETTS 02114-2023

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**BY HAND**

March 20, 2009

Wanda I. Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency – Region 1  
One Congress Street, Suite 1100 (RHC)  
Boston, MA 02114-2023

Re: In the Matter of Viking Fuel Oil Company, Docket No. CWA-01-2009-0041

Dear Ms. Santiago:

Enclosed please find for filing an original and one copy of the Complaint and Notice of Opportunity for Hearing in the above-referenced matter.

Please call me at (617) 918-1839 if you have any questions.

Sincerely,

Jeffrey C. Norcross  
Paralegal

Cc: Steven C. Schlang, Esq., U.S. EPA  
Mr. Gary Lipson, U.S. EPA  
Francis S. McGurrin, Esq.  
Mr. Lewis Steinberg

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

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IN THE MATTER OF: )  
)  
) ADMINISTRATIVE COMPLAINT AND  
) NOTICE OF OPPORTUNITY TO REQUEST A  
) HEARING  
)  
VIKING FUEL OIL COMPANY )  
10 Crossroads Plaza )  
West Hartford, Connecticut 06117 )  
)  
) Proceeding to Assess Class II Civil Penalty Under  
) Clean Water Act Section 311 for Oil Spill Violations  
)  
)  
)  
) Respondent. )  
) Docket No. CWA-01-2009-0041  
)

**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 Viking Fuel Oil Company (“Respondent”) for its discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in a quantity that has been determined may be harmful, in violation of Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3). This Complaint also provides

ADMINISTRATIVE COMPLAINT

*In re Viking Fuel Company*

Docket No. CWA-01-2009-0041

Page 1

notice of Respondent's opportunity to file an Answer to this Complaint and to request a hearing on the proposed penalty.

3. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil, as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), into or upon the navigable waters of the United States or adjoining shorelines in such quantities as may be harmful, as determined under Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4).

4. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the Act, EPA has determined that an oil discharge "may be harmful" to the public health or welfare or the environment of the United States if it causes either: (1) a violation of applicable water quality standards; (2) a film or sheen upon, or discoloration of the surface of the water or adjoining shorelines; or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines ("harmful quantity").

5. "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. § 110.1.

## **II. GENERAL ALLEGATIONS**

6. Respondent is a corporation organized under the laws of Connecticut with its headquarters located at 10 Crossroads Plaza, West Hartford, Connecticut, and, therefore, is a "person" within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7).

7. Respondent is the "owner or operator," within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of an oil distribution facility located at 10 Crossroads Plaza, West Hartford, Connecticut. Respondent owns and operates approximately twelve oil delivery trucks, each of which an "onshore facility" within the meaning of Section 311(a)(10) of the Act, 33

U.S.C. § 1321(a)(10).

8. Respondent delivered approximately 3,900 gallons of oil to one of its customers, the Canton Racquet Club (“CRC”), located at 310 Albany Turnpike, Canton, Connecticut, during several deliveries conducted in October and November 2007.

9. A wetland located just south of the CRC directly borders an unnamed tributary to Rattlesnake Brook. Rattlesnake Brook flows into the Farmington River, which flows into the Connecticut River, which flows into the Long Island Sound.

10. The wetlands bordering Rattlesnake Brook, the unnamed tributary to Rattlesnake Brook, Rattle Snake Brook, the Farmington River, the Connecticut River and Long Island Sound, are “navigable waters” of the United States 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.

11. During oil deliveries conducted on or about October 15, 2007, November 12, 2007, and November 21, 2007, one of Respondent’s employees pumped oil from an oil delivery truck into a monitoring well for CRC’s underground storage tank (“UST”), rather than into the UST.

12. Respondent’s pumping of fuel from its oil delivery truck constitutes a “discharge” as defined by section 311(a)(2) of the Act, 33 U.S.C. § 1321(a)(2).

13. As a result of these discharges, approximately 3,900 of “oil,” as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), was immediately released into the environment.

14. On or around April 9, 2008, an adjacent property owner observed a sheen of oil in the unnamed tributary to Rattlesnake Brook (“tributary”) and bordering wetlands.

15. The Connecticut Department of Environmental Protection (“CTDEP”) was contacted.

ADMINISTRATIVE COMPLAINT

*In re Viking Fuel Company*

Page 3

Docket No. CWA-01-2009-0041

CTDEP conducted an investigation regarding the oil in the wetlands and determined that the oil sheen in the tributary and wetlands resulted from the oil pumped into CRC's monitoring well.

16. The oil caused a sludge or emulsion to be deposited beneath the surface of the wetlands and created a sheen upon the tributary, and thus was a discharge of oil as "may be harmful" pursuant to 40 C.F.R. § 110.3.

### **III. VIOLATIONS**

#### **Count I: Illegal Discharge of Oil into Waters of the United States**

17. The Complaint incorporates Paragraphs 1-16 above by reference.

18. Respondent's discharge of oil into navigable water of the U.S. in a quantity that has been determined may be harmful under 40 C.F.R § 110.3 is violation of Section 311(b)(3) of the CWA.

### **IV. PROPOSED PENALTY**

19. Based on the forgoing Findings of Violation, and pursuant to the authority of Section 311(b)(6)(B)(ii) of the Act, 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.

20. Respondents' illegal discharge of fuel oil into waters of the United States represents a

significant violation of the CWA because the discharge may adversely affect navigable waters, shorelines, vegetation, habitat for fish and wildlife and may threaten human health and safety. The violation commenced on or around April 9, 2008, and has continued through the present for a total of at least 338 days of violation.

#### **V. OPPORTUNITY TO REQUEST HEARING**

21. 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.

22. Default constitutes an admission of all facts alleged in this Complaint and a waiver of the right to a hearing on such factual allegations. To avoid default in this matter, Respondent must, within 30 days after receipt of this Complaint, either: (1) settle this matter with the Complainant; or (2) file both an original and one copy of a written Answer to this Complaint to:

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

Respondent is also required to provide a contemporaneous copy of any Answer to Complainant's counsel, who is authorized to receive service on behalf of EPA pursuant to 40 C.F.R. § 22.5(c)(4), at the following address:

ADMINISTRATIVE COMPLAINT

*In re Viking Fuel Company*

Docket No. CWA-01-2009-0041

Page 5

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

23. 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.

24. 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**

25. 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.

#### **VII. SETTLEMENT**

26. You may request an informal conference with Complainant's attorney, Steven Schlang,

ADMINISTRATIVE COMPLAINT

*In re Viking Fuel Company*

Docket No. CWA-01-2009-0041

Page 6

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.

27. If you have any questions concerning the enclosed Consent Agreement or the settlement process, or wish to arrange for an informal conference, please contact Steven Schlang at (617) 918-1773.

Date: 03/13/09

Susan Studlien

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



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I**

|                         |   |                               |
|-------------------------|---|-------------------------------|
| In the Matter of:       | ) |                               |
|                         | ) |                               |
| Viking Fuel Oil Company | ) | Docket No. CWA-01-2009-0041   |
| 10 Crossroads Plaza     | ) |                               |
| West Hartford, CT 06117 | ) |                               |
|                         | ) | <b>CERTIFICATE OF SERVICE</b> |
| Respondent              | ) |                               |
|                         | ) |                               |

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity for a Hearing has been sent to the following persons on the date noted below:

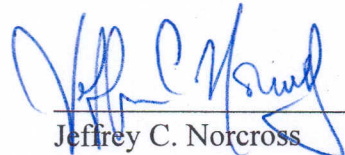
|  |   |
|--|---|
| Original and One Copy<br>(Hand-Delivered): | Wanda Santiago<br>Regional Hearing Clerk (RAA)<br>U.S. Environment Protection<br>Agency, Region I<br>One Congress Street, Suite 1100<br>Boston, MA 02114-2023 |
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|  |  |
|--|--|
| Copy, including 40 C.F.R.<br>Part 22<br>(Certified Mail, Return Receipt<br>Requested): | Lewis Steinberg<br>Viking Fuel Oil Company<br>10 Crossroads Plaza<br>West Hartford, CT 06117 |
|--|--|

and

Francis S. McGurrin, Esq.  
O'Brien and von Rosenvinge, PC  
27 Mica Lane, Suite 202  
Wellesley, MA 02481

Dated: 3/20/2009



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