



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I

5 POST OFFICE SQUARE, SUITE 100  
BOSTON, MASSACHUSETTS 02109-3912

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SEP 27 2011

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region I  
5 Post Office Square, Suite 100 (ORA18-1)  
Boston, MA 02109-3912

BY HAND

Re: Notice of CWA Administrative Penalty Complaint Issued to  
BOSFuel Corporation and Swissport Fueling, Inc., Boston, MA  
Docket No. CWA-01-2011-0123

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,

Tonia Bandrowicz  
Senior Enforcement Counsel

Enclosure

cc:

Hortencia Barton, BOSFuel Corporation  
Stanley Alan Livingston, Swissport Fueling, Inc.  
Bruce Hover, BOSFuel Station Manager

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

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IN THE MATTER OF:  
  
BOSFuel Corporation  
c/o American Airlines  
4333 Amon Carter Blvd.  
Fort Worth, TX 75261  
  
and  
  
Swissport Fueling, Inc.  
45025 Aviation Drive, Suite 350  
Dulles, VA 20166  
  
Respondents

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

Proceeding to Assess Class II Civil Penalties  
Under Section 311 of the Clean Water Act  
for Violations of the Oil Pollution Prevention  
Regulations at 40 C.F.R. Part 112

Docket No. CWA 01-2011-0123

**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," at 40 C.F.R. Part 22 ("Part 22"), Complainant hereby provides notice of its proposal to assess a civil penalty against BOSFuel Corporation and Swissport Fueling, Inc. ("Respondents") for their 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 Respondents' opportunity to file an Answer to this Complaint and to request a hearing on the proposed penalty.

3. Section 311(j)(1) of the Act, 33 U.S.C. § 1321(j)(1), provides that the President 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. Section 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 Facility Response Plan or FRP regulations") require FRP-regulated facilities to,

among other things, develop and implement a facility response training program and a drill/exercise program that satisfy the requirements of the regulations. 40 C.F.R. 112.21(a).

## **II. GENERAL ALLEGATIONS**

7. Respondent, BOSFuel Corporation, a corporation organized under the laws of Delaware, with a principal place of business in Dulles, Virginia, 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, Swissport Fueling, Inc., a corporation organized under the laws of Delaware, with a principal place of business in Dulles, Virginia, is a “person” within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7) and 40 C.F.R. § 112.2.

8. Respondents are the “operators,” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of an oil storage and distribution facility located at Boston Logan International Airport, 196 Prescott Street, Boston, Massachusetts (“the Facility”).

9. According to the Facility’s FRP, the Facility has been in operation since October 1999.

10. Respondents are engaged in storing, distributing, and consuming “oil,” within the meaning of 40 C.F.R. §§ 112.1(b) and 112.2, at the Facility

11. 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.

12. 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.

13. The Facility is located directly adjacent to Boston Harbor and Boston Inner Harbor which are “navigable waters” of the United States as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

14. Due to its immediate proximity to Boston Harbor and Boston Inner Harbor, the Facility could reasonably be expected to discharge oil in harmful quantities into a navigable water or its adjacent shoreline.

15. As the operators 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 quantities that may be harmful, as defined in 40 C.F.R. § 110.3, to navigable waters of the United States, Respondents are subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112.

16. Under 40 C.F.R. § 112.20(c), EPA shall determine whether a facility could, because of its location, reasonably be expected to cause significant and substantial harm to the environment and therefore be subject to the FRP requirements in 40 C.F.R. §§ 112.20 and 112.21.

17. Because Respondents could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines, EPA has determined that Respondents are subject to the FRP requirements at 40 CFR §§ 112.20 and 112.21.

18. Under 40 C.F.R. §§ 112.20 and 112.20(h), the owner or operator of an FRP-regulated facility shall prepare a FRP that addresses the elements listed in the regulation.

19. The EPA New England Office has on file an FRP plan for the Facility, which had been previously approved by EPA on November 27, 2007.

### **III. VIOLATIONS**

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

20. Paragraphs 1 through 19 are incorporated by reference.

21. Pursuant to 40 C.F.R. § 112.21(a), the owner or operator of an FRP-regulated facility shall develop and implement a facility response training program and a drill/exercise program as required by 40 C.F.R. § 112.21 (b) and (c), respectively.

22. In accordance with § 112.21(c), in developing a program of facility response drills/exercises, the facility owner or operator may either follow the National Preparedness for Response Exercise Program (PREP), or an alternative program, if approved by the EPA Regional Administrator. In this case, the Facility FRP stated that the program was developed in accordance with PREP.

23. On May 31, 2011, representatives of EPA, Massachusetts Department of Environmental Protection, and U.S. Coast Guard (“USCG”) conducted a Government-Initiated Unannounced Exercise (“GIUE”) under the PREP and determined that Respondents could not properly implement its response plan and that Respondents’ personnel were not adequately trained in implementing the response plan, resulting in an “unsuccessful” overall exercise.

24. The objective of the GIUE is to determine whether the Respondents can successfully conduct response actions, through emergency notifications and spill response equipment deployment, to mitigate a simulated release of oil. The GIUE rates the Respondents’ efforts as either successful or unsuccessful in five categories: (1) notifications; (2) containment boom arrival and subsequent successful deployment; (3) arrival of oil recovery devices and subsequent successful operation; (4) demonstrating availability of adequate storage capacity; and (5) properly conducting the exercise considering the size of a small spill. The Respondents were

rated “unsuccessful” in all categories.

25. On the date of the inspection and by letter dated June 3, 2011, EPA informed the Respondents that they had failed to successfully satisfy all of the objectives of the GIUE and that the deficiencies documented during the exercise (including notifications and the use of the FRP, containment boom arrival and subsequent successful deployment, arrival of oil recovery devices, demonstrating availability of adequate storage capacity, and properly conducting the exercise considering the size of a small spill) must be addressed in order to meet the requirements of the FRP regulations.

26. Respondents’ failure to develop and implement an adequate facility response training program and a facility response drill/exercise program, as evidenced by the failure to successfully satisfy the objective of the GIUE, violates 40 C.F.R. § 112.21(a). Respondents have violated this requirement each day from at least May 31, 2011, the date of the GIUE, to the date of this Complaint.

27. Pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. § 19.4, Respondents are liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500. EPA considers each day Respondents failed to have developed or implemented facility response training program or a facility response drill/exercise program to be a separate day of violation.

#### **IV. PROPOSED PENALTY FOR CLEAN WATER ACT VIOLATION**

28. 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 Respondents in an amount not to exceed \$16,000 per day for each day during which its

violations continued, up to a maximum of \$177,500, 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.

29. Respondents' violations of the Oil Pollution Prevention regulations alleged above represent significant violations of the Act because failure to fully prepare and implement adequate FRP plan 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**

30. Respondents may, pursuant to Section 311(b)(6) of the Act and 40 C.F.R. § 22.15(c), request a hearing on the proposed penalty assessment in its Answer to this Complaint. Even if Respondents do 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.

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



Wanda Santiago  
Regional Hearing Clerk (RAA)  
U.S. Environmental Protection Agency-Region 1  
5 Post Office Square, Suite 100  
Boston, Massachusetts 02109-3912

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

Tonia Bandrowicz, Senior Enforcement Counsel  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency-Region I  
5 Post Office Square, Suite 100 (OES 04-4)  
Boston, Massachusetts 02109-3912  
Tel: 617-918-1734  
Fax: 617-918-0734  
Email: bandrowicz.toni@epa.gov

32. Pursuant to 40 C.F.R. § 22.15, the Answer shall clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint with regard to which Respondents have knowledge. If the Answer asserts no knowledge of a particular factual allegation, the allegation shall be deemed denied. Otherwise, the 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 Respondents wish to assert, challenges to any factual allegation in the Complaint, and any basis Respondents may have to oppose the Complainant's proposed penalty.

33. 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**

34. 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. 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**

35. You may request an informal conference with Complainant's attorney, Tonia Bandrowicz, 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.

36. If you have any questions concerning the enclosed Consent Agreement or the settlement process, or wish to arrange for an informal conference, please contact Tonia Bandrowicz, Senior Enforcement Counsel, at (617) 918-1734.

Date: 09/23/11

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