

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for

Steven J. Viggiani
Name of Case Attorney

8/17/11
Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number CWA-01-2011-0048

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Fabian Oil, Inc.
15 Oak Street
Oakland, Maine 04963

Total Dollar Amount of Receivable \$ 50,000

Due Date: 10/27/11

SEP due? Yes _____ No _____ Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1st \$ 20,000 on 8/27/11

2nd \$ 15,131 on 9/26/11

3rd \$ 15,049 on 10/27/11

4th \$ _____ on _____

5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office

Phone Number _____



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

RECEIVED

August 17, 2011

2011 AUG 17 P 4: 45

HAND DELIVERY

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

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

Re: In the Matter of: Fabian Oil, Inc., Docket No. CWA-01-2011-0048

Dear Ms. Santiago,

Please accept for filing the attached original and one copy of the fully-executed Consent Agreement and Final Order ("CAFO") that has initiated and settled the above-referenced Clean Water Act enforcement action brought by the U.S. Environmental Protection Agency ("EPA") against Fabian Oil, Inc. ("Fabian").

The Consent Agreement portion of the CAFO was signed by the Respondent Fabian and by the Complainant EPA in June 2011. After a 30-day public comment period (during which no comments were received), the Regional Judicial Officer ("RJO") signed the Final Order portion of the CAFO on August 17, 2011. Please note that, per agreement of the parties' counsel, a typographical error has been corrected and the phrase "owner or operator" has been inserted in Paragraph 7 of the final Consent Agreement.

Thank you for your attention to this matter.

Sincerely,

Steven J. Viggiani
Senior Enforcement Counsel
EPA Region 1

Attachments (original and one copy)

cc: Bryan B. Ward, Esq., Counsel for Respondent (via mail)
E.J. Fabian, President, Fabian Oil, Inc. (via mail)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED

2011 AUG 17 P 4: 46

IN THE MATTER OF)
)
FABIAN OIL, INC.)
15 Oak Street)
Oakland, Maine 04963)
)
Respondent)
_____)

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK
Docket No. CWA-01-2011-0048
**CONSENT AGREEMENT AND
FINAL ORDER FOR CLASS II
CIVIL PENALTY ACTION UNDER
SECTION 311(b)(6) OF THE
CLEAN WATER ACT**

1. The Regional Administration of the United States Environmental Protection Agency, Region 1 ("EPA") and the Office of Regional Hearing ("ORH") ("CAFO") to Fabian Oil, Inc. ("Fabian Oil") ("CAFO") alleges that Respondent violated federal regulations promulgated under the Clean Water Act ("Act"), 33 U.S.C. §§ 1251-3187. EPA and Fabian Oil (together, the "Parties") agree to resolve this action by the issuance of this CAFO as provided under 40 C.F.R. § 22.13(b) of EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 C.F.R. Part 22.

original

I. DESCRIPTION OF VIOLATIONS

2. EPA alleges that Respondent failed 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.

A. Statutory and Regulatory Authority

3. EPA takes this action under the authority of Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), for violations of federal regulations promulgated pursuant to Section 311(j) of the Act, 33 U.S.C. §1321(j).

4. Section 311(j)(1) of the Act, 33 U.S.C. § 1321(j)(1), provides that the President, as delegated to EPA, 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”

5. Under the authority of Section 311(j)(1) of the Act, EPA has promulgated the Oil Pollution Prevention regulations, at 40 C.F.R. Part 112, which 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. See 40 C.F.R. § 112.1(b).

B. General Allegations

6. Fabian Oil is a company organized under the laws of Maine with its headquarters located at 19 Oak Street, Oakland, Maine, and, therefore, is a “person” within the meaning of Sections 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

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 the following three bulk oil storage and distribution facilities (together, the “Facilities”):

- 14 Oak Street, Oakland, Maine (“Oak Street Facility”);
- Route 23/Libby Hill Road, Oakland, Maine (“Libby Hill Facility”); and
- Jerry Street, Jay, Maine (“Jerry Street Facility”).

8. Each of the Facilities became operational prior to August 16, 2002. Specifically, according to information provided by Respondent, the Oak Street Facility started operation in February 2000; the Libby Hill Facility, in November 1994; and the Jerry Street Facility, in November 2001.

9. At each of the Facilities, Respondent stores “oil” or oil products within the meaning of Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2.

10. Each of the Facilities has an aggregate aboveground storage capacity greater than 1,320 gallons of oil in containers that hold at least 55 gallons. Specifically, the Oak Street Facility has an aggregate aboveground oil storage capacity of over 60,000 gallons, including five 10,000 gallon tanks for various types of gasoline, diesel and fuel oil. The Libby Hill Facility has an aggregate aboveground storage capacity of about 30,000 gallons, consisting of two 15,000 gallon tanks for fuel oil and kerosene. The Jerry Street Facility has an aggregate aboveground storage capacity of about 45,000 gallons, consisting of three 15,000 gallon tanks for fuel oil and kerosene.

11. Each of the Facilities 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. Each of the Facilities is a “non-transportation-related” facility within the meaning of 40 C.F.R. § 112.2 and Appendix A of 40 C.F.R. § 112.

13. The Oak Street Facility is located near an unnamed stream that flows into the Messalonskee Stream. Due to the area’s topography, the Oak Street Facility could reasonably be expected to discharge oil into the Messalonskee Stream and downstream bodies of water, including the Kennebec River and Merrymeeting Bay.

14. The Libby Hill Facility is located near an unnamed stream that empties into Messalonskee Lake. Due to the area’s topography, the Libby Hill Facility could reasonably be expected to discharge oil into the Messalonskee Lake and downstream bodies of water, including the Kennebec River and Merrymeeting Bay.

15. The Jerry Street Facility is located very near to the Sevenmile Stream. Due to this proximity, the Jerry Street Facility could reasonably be expected to discharge oil into the Sevenmile Stream and downstream bodies of water, including the Androscoggin River and Merrymeeting Bay.

16. The Sevenmile Stream, the Messalonskee Stream, the Messalonskee Lake, the Kennebec River, the Androscoggin River and the Merrymeeting Bay are all “navigable waters” as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1, and are subject to the jurisdiction of Section 311 of the Act, 33 U.S.C. § 1321.

17. Accordingly, each of the Facilities is a non-transportation-related onshore facility that, due to its location and in the event of a significant uncontained release, could reasonably be expected to discharge oil into “navigable waters” of the United States.

18. Therefore, at each of the Facilities, Respondent is subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112.

C. Specific Violations

19. Under 40 C.F.R. § 112.3, Respondent must prepare, maintain and fully implement a written Spill Prevention Control and Countermeasure (“SPCC”) Plan for each of its three Facilities, in accordance with 40 C.F.R. §§ 112.5, 112.7, 112.8, and other requirements of 40 C.F.R. Part 112.

20. An EPA representative conducted an SPCC inspection of the Oak Street and Libby Hill Facilities on October 27, 2009, and an SPCC inspection of the Jerry Street Facility on March 24, 2010. In addition, on January 11, 2010, EPA issued Respondent an information request pursuant to Sections 308(a) and 311(m) of the Act, 33 U.S.C. §§ 1318(a) and 1321(m), to which Respondent provided SPCC-related information to EPA in February and March 2010.

21. Based on EPA’s 2009-10 inspections, and on various documents and information provided by Respondent to EPA, EPA has determined that Respondent failed to maintain and fully implement the SPCC Plans it had prepared for each of the three Facilities. Specifically, Respondent prepared SPCC Plans for the Facilities in 2002-03, but the SPCC Plans were not kept up-to-date and not fully implemented. After EPA’s inspections in 2009-10,

Respondent produced revised, updated SPCC Plans for each Facility in April and May 2010, and has certified in Section II that it has fully implemented these revised, updated SPCC Plans.

22. Respondent's failure to maintain and fully implement its SPCC Plans for the three Facilities violated 40 C.F.R. § 112.3(a).

23. 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 \$16,000 per day for each day during which the above-described violations have continued.

II. CONSENT AGREEMENT

24. EPA and Respondent agree that the above-described matter constitutes a disputed claim and that settlement of the matter is in the public interest, and that entry of this CAFO without litigation is the most appropriate means of resolving the matter.

25. Respondent admits the jurisdictional allegations in Section I of this CAFO.

26. Respondent neither admits nor denies the specific factual allegations contained in Section I of this CAFO.

27. Respondent certifies that its three Facilities are currently in compliance with the Oil Pollution Prevention regulations at 40 C.F.R. Part 112, and that it has fully implemented the revised, updated SPCC Plans produced for the Facilities in 2010.

A. Waiver of Rights

28. Respondent waives the right to a hearing in this matter under Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and to appeal any Final Order in this

matter under Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

B. Civil Penalty

29. Respondent consents to pay a total combined civil penalty of \$50,000, plus calculated interest, for all three Facilities in accordance with the terms and schedule set out below. EPA has determined that this an appropriate settlement penalty based on the specific facts and circumstances of this case, with reference to the relevant penalty factors identified at Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8). Respondent shall pay the penalty as follows: not later than 10 days after this Consent Agreement becomes final, Respondent shall pay \$20,000; not later than 40 days after this Consent Agreement become final, Respondent shall pay \$15,131, comprised of \$15,000 plus \$131 in calculated interest; and, not later than 70 days after this Consent Agreement becomes final, Respondent shall pay \$15,049, comprised of \$15,000 plus \$49 in calculated interest.

30. To make each of these penalty payments, Respondent shall submit a cashier's or certified check, payable to the "U.S. Environmental Protection Agency" and referencing the title and docket number of the action ("In the Matter of Fabian Oil, Inc., CWA-01-2011-0048 ") and "Oil Spill Liability Trust Fund - 311" in the amounts specified in Paragraph 29 to:

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

31. Respondent shall note on each penalty payment check the title and docket number of this case. Respondent shall submit copies of each check to the following people:

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
Mail code ORA-18-1
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

and

Steven J. Viggiani
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region I
Mail code OES04-3
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

32. Respondent certifies that it shall not use any portion of its settlement penalty payments in any way as, or in furtherance of, a tax deduction for Respondent, or for any of Respondent's corporate affiliates or officers, under federal, state or local law.

33. Pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H), a failure by the Respondent to pay any penalty payment assessed by this CAFO in full by its due date shall subject Respondent to a civil action to collect the assessed penalty, plus interest at current prevailing rates from the date of this CAFO. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(d), promulgated under 31 U.S.C. § 3717. Any person who fails to pay on a timely basis the amount of an assessed penalty shall be required to pay in addition to such amount and interest, attorney's fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such

nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

C. General Provisions

34. The terms of this CAFO shall apply to and be binding on EPA and on Respondent, its officers, directors, agents, servants, employees, successors and assigns.

35. This CAFO constitutes a settlement by EPA of all claims for federal civil penalties under Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), for the violations set out in Section I above.

36. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the rights of EPA or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to herein.

37. Except as described in Paragraph 33 above, each party shall bear its own costs, disbursements and attorneys fees in connection with this enforcement action, and specifically waives any right to recover such costs, disbursements or fees from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

38. Respondent's undersigned representative certifies that he or she is fully authorized by Respondent to enter into the terms and conditions of this Consent Agreement and to execute and legally bind Respondent to it.

For FABIAN OIL, INC.:

Date: 6.22.11



Edward J. Fabian, President
Fabian Oil, Inc.

For U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: 06/29/11



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

III. FINAL ORDER

39. The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, which will become final thirty (30) days from the date it is signed by the Regional Judicial Officer, unless a petition to set aside the order is filed by a commenter, pursuant to Section 311(b)(6)(d) of the Act, 33 U.S.C. 1321(b)(6)(d), and 40 C.F.R. Part 22.

Date: August 17, 2011 Jill T. Metcalf
Jill T. Metcalf
Acting Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1