

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I
1 Congress Street
Suite 1100 - SEL
Boston, MA 02114-2023

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Steven C. Schlang
Enforcement Counsel
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EPA ORG
OFFICE OF
REGIONAL HEARING CLERK

April 1, 2008

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1
One Congress Street
Boston, Massachusetts 02114-2023

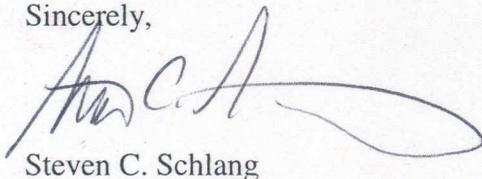
Re: In the Matter of: R.L. Greenlaw & Son, Inc.
Docket Number: CWA-01-2008-0052

Dear Ms. Santiago,

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

Please do not hesitate to contact me should you have any questions regarding the enclosed.

Sincerely,



Steven C. Schlang

cc: Paul Greenlaw

In the Matter of: R.L. Greenlaw and Son, Inc.
Docket Number CWA-01-2008-0052

CERTIFICATE OF SERVICE

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
hand delivered:

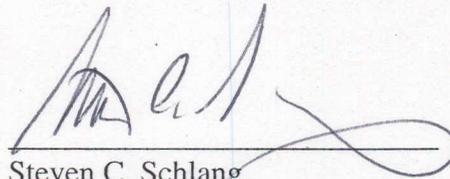
Wanda Santiago
Regional Hearing Clerk (RAA)
U.S. EPA, Region I
One Congress Street, Suite 1100
Boston, MA 02114-2023

Copy by Federal Express

Paul Greenlaw
President
R.L. Greenlaw and Son, Inc.
P.O. Box 95
Stonington, ME 04681

Date:

4/1/08



Steven C. Schlang
Office of Environmental Stewardship (SEL)
U.S. Environmental Protection Agency
Region I
One Congress Street, Suite 1100
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED

APR 01 2008

EPA ORC
Office of Regional Hearing Clerk

IN THE MATTER OF:)

R.L. Greenlaw & Son, Inc.)
3 N. Main Street)
Stonington, ME 04681)

Respondent.)
_____)

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

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

Docket No. CWA-01-2008-0052

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 R.L. Greenlaw & Son, Inc. ("Respondent" or "R.L. Greenlaw") for its failure to comply with the Oil Pollution Prevention regulations set forth at 40 C.F.R. Part 112 promulgated under the authority of Section 311(j), 33 U.S.C. § 1321(j), and other provisions of the Act, 33 U.S.C. §§ 1251 et seq. This Complaint also provides notice of Respondent's opportunity to file an Answer to this Complaint and to request a hearing on the proposed penalty.

3. Section 311(j)(1) of the Act, 33 U.S.C. § 1321(j)(1), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore and offshore facilities, and to contain such discharges . . .”

4. Under the authority of Section 311(j)(1) of the Act, the Oil Pollution Prevention regulations establish procedures, methods, and requirements for preventing the discharge of oil. These requirements apply to owners or operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products that, due to their location, could reasonably be expected to discharge oil in harmful quantities (as defined in 40 C.F.R. Part 110) to navigable waters of the U.S. or adjoining shorelines. 40 C.F.R. § 112.1(b).

5. Under 40 C.F.R. § 112.3, the owner or operator of an onshore facility that became operational prior to August 16, 2002, that has discharged or, due to its location, could reasonably be expected to discharge, oil in harmful quantities into or upon the navigable waters of the United States shall have prepared and implemented a Spill Prevention, Control, and Countermeasure (“SPCC”) Plan in accordance with 40 C.F.R. § 112.7.

6. Under 40 C.F.R § 112.7(j) an SPCC plan must also conform with the applicable requirements of more stringent State rules, regulations, and guidelines.

II. GENERAL ALLEGATIONS

7. Respondent is a corporation organized under the laws of Maine with a corporate headquarters of 3 North Main Street, P.O. Box 95, Stonington, Maine, 04681, and, therefore, 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 is the “owner or operator” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of two bulk oil storage and distribution facilities (collectively, “Greenlaw Facilities”) located in Stonington, Maine. The larger of the two facilities is located on Sea Breeze Avenue in Stonington, Maine (“Sea Breeze Facility”); and the smaller of the two facilities is located on Indian Point Road in Stonington, Maine (“Indian Point Facility”).

9. Respondent has owned and operated the Greenlaw Facilities since at least 1940.

10. On August 29, 2005, the Sea Breeze Facility was inspected by duly authorized representatives of the Maine Department of Environmental Protection (“MEDEP”). Subsequently, by a letter dated October 4, 2005 (“MEDEP letter”), the MEDEP inspector made recommendations to Respondent regarding the Sea Breeze Facility with respect to upgrades that would be necessary to bring the facility into compliance with the SPCC regulations. The MEDEP letter included the following findings about the Sea Breeze Facility: (a) the facility lacked overfill protection for the oil storage tanks as required by the SPCC requirements; (b) the facility lacked a treatment system to treat drainage waters accumulating in the diked area surrounding the tanks prior to draining directly to Penobscot Bay, as required by state regulations; (c) there was noticeable cracking in the facility’s existing concrete containment area that could lead to a release of oil-contaminated water to Penobscot Bay; (d) the facility lacked adequate secondary containment for the area where delivery trucks are loaded with product; and (e) Respondent failed to comply with MEDEP vapor recovery requirements and improperly top-loaded gasoline into delivery trucks. In addition, the MEDEP letter recommended that Respondent: (a) conduct a thorough inspection of the containment system to ensure liquid tightness; (b) provide secondary containment for trucks storing petroleum products overnight at

the facility; and (c) include a spill reporting form in the SPCC plan and to maintain proper records as required by SPCC regulations for a period of 3 years.

11. On July 26, 2007, a duly authorized representative of EPA conducted an SPCC inspection (“inspection”) at both Greenlaw Facilities.

12. At the time of the inspection, R.L. Greenlaw maintained the following above-ground storage tanks (“ASTs”) at its Sea Breeze Facility: (1) a 15,000-gallon tank containing super-unleaded gasoline; (2) an 8,000-gallon tank containing kerosene; (3) a 15,000-gallon tank containing regular gasoline; (4) a 10,000-gallon tank containing mid-grade gasoline; (5) a 10,000-gallon tank containing No.2 heating oil; (6) a 12,500-gallon tank containing diesel/No.2 oil; (7) a 15,000-gallon tank containing off-road diesel; (8) a 15,000-gallon tank containing on-road diesel; and (9) a 10,000-gallon tank containing kerosene, out-of-service at the time of the inspection, for a total aboveground oil storage capacity of 110,500 gallons. In addition, at the time of the inspection, the Respondent owned one truck with a 2,700-gallon capacity, that, according to the company owner, was generally stored overnight with up to 1,000 gallons of petroleum product.

13. At the time of the inspection, Respondent maintained the following ASTs at its Indian Point Facility: (1) a 3,400-gallon tank containing diesel; and (2) a 3,400-gallon tank containing gasoline, for a total aboveground oil storage capacity of 6,800 gallons.

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

15. The R.L. Greenlaw Facilities are “onshore facilities” 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.

16. The R.L. Greenlaw Facilities are “non-transportation-related” facilities within the meaning of 40 C.F.R. § 112.2 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

17. The Sea Breeze Facility is located immediately adjacent to Penobscot Bay (Atlantic Ocean). Drainage from the Sea Breeze Facility that accumulates in the diked area surrounding the tanks is discharged directly to Penobscot Bay. Due to the proximity of the Sea Breeze Facility to Penobscot Bay and the topography of the area, the Sea Breeze Facility could reasonably be expected to discharge oil into Penobscot Bay.

18. The Indian Point Facility is located immediately adjacent to Penobscot Bay (Atlantic Ocean). Pipes from the Indian Point Facility run directly to a waterfront dock. Due to the proximity of the Indian Point Facility to Penobscot Bay and the topography of the area, the Indian Point Facility could reasonably be expected to discharge oil into Penobscot Bay.

19. Penobscot Bay is a “navigable water of the United States” and is subject to the jurisdiction of Section 311 of the Act as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

20. Based on the allegations in paragraphs 7 through 19 above, Respondent is the owner and operator of a non-transportation-related facility engaged in storing, distributing, and consuming oil or oil products that could reasonably be expected to discharge oil in harmful quantities to navigable waters of the United States and is, therefore, subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112.

III. VIOLATIONS

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

21. On July 26, 2007, an authorized EPA representative (“inspector”) inspected the R.L. Greenlaw Facilities to determine compliance with Section 311(j) of the Act and the requirements of the Oil Pollution Prevention regulations.

22. Under 40 C.F.R. § 112.3, the owner or operator of an SPCC-regulated facility in operation prior to August 16, 2002, shall have prepared and implemented an SPCC plan that is in accordance with the requirements of 40 C.F.R. § 112.7.¹

23. Respondent has owned and operated the facilities since at least 1995. The current SPCC plan for the Sea Breeze Facility at the time of EPA’s inspection was dated December 1995, with an amendment dated June 2003. Respondent did not provide the EPA inspector with a copy of an SPCC plan for the Indian Point Facility, however, the EPA inspector received a copy of an SPCC plan from the manager of a facility adjacent to the Indian Road Facility (the Stonington Lobster Co-operative), which included the Indian Point Facility tanks. This plan was dated September 1995, with an amendment dated June 2003.

24. EPA determined upon review of Respondent’s SPCC plan for the Sea Breeze Facility, and upon review of the conditions observed at the Sea Breeze and Indian Point Facilities during the field inspection on July 26, 2007, that Respondent failed to adequately provide for measures which would prevent the discharge of oil from reaching waters of the United States and to implement all of the specific requirements listed in 40 C.F.R. §§ 112.7 and

¹The preamble to the amended SPCC regulations for 40 CFR § 112.3(a) states that “The owner or operator of a facility in operation on the effective date of this rule who is required to have prepared or implemented an SPCC Plan, but has not, remains subject to civil penalties for a violation of current § 112.3 if the time has expired for preparation or implementation of his Plan.” 67 FR 47042, 47083 (July 17, 2002)

112.8 that are applicable to the Facilities. In particular, at the time of the EPA inspection, portions of Respondent's SPCC plan were inadequate or, in the alternative, Respondent had failed to fully implement provisions of its SPCC plan, as follows:

A. The Sea Breeze Facility

- (i). Respondent failed to maintain records of facility inspections for a period of three years, as required by 40 C.F.R. § 112.7(e);
- (ii). The Facility lacked appropriate containment and/or diversionary structures to contain oil in the delivery truck loading area, located at the far end of an accessway directly adjacent to Penobscot Bay, failing to ensure that discharged oil would not escape and would not flow directly to Penobscot Bay before cleanup occurs, as required by 40 C.F.R. § 112.7(c).
According to page 3-2 of Respondent's June 2003 SPCC plan, "The facility is graded such that all surface drainage would flow southwest into Deer Island Thorofare [the ocean]." According to a March 18, 2007 letter to EPA by Civil Engineering Services, Inc. (CES), on behalf of Respondent, "Secondary containment will be provided for the delivery truck loading area";
- (iii). The Facility lacked appropriate containment and/or diversionary structures to contain oil in the delivery truck off-loading area, such that discharged oil would not escape the containment system before cleanup occurs, as required by 40 C.F.R. § 112.7(c). According to page 3 of a September 7, 2007 letter by CES to EPA, on behalf of Respondent, "The offloading area is up slope of the secondary containment structure and drains to the

concrete dike where drainage is restrained until it can be inspected.”

However, the results of hydrostatic (liquid tightness) testing of the concrete dike by CES on November 1, 2007, show that the concrete dike does not meet the requirement of 40 C.F.R. § 112.7(c)(1) that dikes, berms, or retaining walls be constructed so as to be sufficiently impervious to contain oil. According to the CES report, “A significant percentage of the lost water volume was attributed to a faulty valve used for discharging storm water...there was seepage of water through the soil and in between the ledge and poured concrete...the granite block walls, and specifically the mortared joints, were determined to be the source of material escaping the dike...the results of the hydrostatic testing indicated that there were areas of the containment structure that needed maintenance and additional physical containment measures put in place to ensure that the diked area is sufficiently impervious.” According to the March 18, 2007, CES letter, “The off-load area will be regraded to ensure that material spilled as a result of the transfer of fuel from the tank truck to the tanks will flow into the secondary containment area. The grading will ensure that the entirety of the most likely discharge will be contained.”

- (iv). Respondent failed to maintain records of personnel training, as required by 40 C.F.R. § 112.7(e) and (f);
- (v). Respondent failed to maintain records of dike drainage events, for a period of three years, as required by 40 C.F.R. §§ 112.7(e) and 112.8(c)(3);
- (vi). Respondent failed to implement or otherwise provide EPA documentation

of completion of all of the facility upgrades and action items listed in a 1996 PDSI tank inspection report, which are requirements under 40 C.F.R. §§ 112.7 and 112.8, as required by 40 C.F.R. § 112.8(c)(6), including, but not limited to, the installation of security fencing and transfer station containment, and internal inspections of Tanks #7 (15,000-gallon AST in kerosene service at the time) and #4 (15,000-gallon AST in low-sulfur diesel service at the time);

- (vii). The Facility lacked an adequately constructed and sufficiently impervious dike around its ASTs to contain discharged oil, as required by 40 C.F.R. § 112.8(c)(2). During the July 26, 2007 inspection the EPA inspector observed that while a splash wall was constructed on the water-side end of the westernmost tank (positioned flush with the dike wall), apparently so as to direct spills back into the dike, the tank situated at the eastern end of the installation overhung the dike without any such splash wall, or other measure, such that spills from that tank (e.g., occurring during a “scissor split”) would not appear to be contained. The inspector also observed the lack of a splash wall or other environmentally equivalent measure along the northern perimeter of the tank installation, so as to direct spills originating from the heads of the tanks into the diked area. In addition, the results of hydrostatic (liquid tightness) testing of the concrete dike by CES on November 1, 2007, show that the concrete dike does not meet the impervious requirement of 40 C.F.R. § 112.8(c)(2). According to the March 18, 2007 CES letter to EPA, “As a result of the hydrostatic testing

performed by CES, Inc, it was determined that the secondary containment structure was not sufficiently impervious. As a result of this testing several areas will have new concrete floors and walls poured to ensure the dike meets the definition of ‘sufficiently impervious’ (40 C.F.R. § 112.8(c)(2)”;

- (viii). The tanks at the Facility were past due for integrity testing, as required by 40 C.F.R. § 112.8(c)(6) and the “good engineering practice” requirement of 40 C.F.R. § 112.3(d);
- (ix). Respondent failed to promptly remove accumulations of oil from diked areas, as required by 40 CFR 112.8(c)(10);
- (x). The SPCC plan does not address secondary containment provisions for trucks that store petroleum products overnight;
- (xi). The facility is not fenced, as required by 40 C.F.R. § 112.7(g)(1), and Respondent has provided no security for the dike drain valve, which allows drainage of dike fluids directly into Penobscot Bay; and
- (xii). According to the company owner, Facility lighting is provided by existing street lights, however Respondent has failed to produce documentation that verifies that the company inspects the status of the town’s street lights to ensure that they are continually functional and illuminate all oil storage and transfer areas of the facility, as required by 40 C.F.R. § 112.7(g)(5). According to the September 7, 2007 CES letter, “Lighting controlled and operated by RL Greenlaw & Son will be installed...to detect and respond to a potential oil discharge at the facility.”

B. The Indian Point Facility

- (i). Respondent has not submitted an SPCC plan for this facility;
- (ii). Respondent failed to adequately maintain the dike surrounding the ASTs (cracking observed in the concrete walls) so as to be sufficiently impervious to contain discharged oil, as required by 40 C.F.R. § 112.8(c)(2);
- (iii). The facility is not fenced, as required by 40 CFR 112.7(g)(1); and
- (iv). Respondent failed to maintain records of facility inspections for a period of three years, as required by 40 C.F.R. § 112.7(e).

25. Respondent's failure to fully prepare and implement SPCC plans for the facilities in accordance with the requirements of 40 C.F.R. §§ 112.7 and 112.8, as described in paragraphs 1 through 24 above, violated 40 C.F.R. § 112.3. Respondent has violated these requirements for each day for at least the past five years, for a total of at least 1,826 days.²

26. As alleged in the preceding paragraph, and pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$11,000 per day for each day during which the violation continues, up to a maximum of \$157,500.

IV. PROPOSED PENALTY

27. Based on the forgoing Findings of Violation, and pursuant to the authority of Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. § 19.4, and Section 311(b)(8) of the Act, the Complainant proposes that a Final Order assessing administrative penalties be issued against Respondent in an amount not to exceed \$11,000 per day for each day during which its violations

²EPA is not pursuing penalties for violations of 40 C.F.R. Part 112 beyond the federal five year statute of limitations found at 28 U.S.C. § 2462. Five years equals 1,826 days of violation.

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.

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

29. 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.

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

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

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:

Steven Schlang, Senior Enforcement Counsel
Office of Environmental Stewardship (SES)
U.S. Environmental Protection Agency-Region I
One Congress Street, Suite 1100
Boston, Massachusetts 02114-2023
Tel: 617-918-1773
Fax: 617-918-0773
Email: Schlang.Steven@epa.gov

31. 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.

32. 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

33. 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

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

35. 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, Senior Enforcement Counsel, at (617) 918-1773.

Date: 3-31-08

Sam Silverman, acting for
Susan Studlien
Director, Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region I