

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

**U.S. EPA REGION 7
HEARING CLERK**

BEFORE THE ADMINISTRATOR

IN THE MATTER OF
Lake Burger Holdings, LLC

Respondent

COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

Docket No. CWA-07-2025-0028

Proceeding to Assess Class II Civil Penalty Under Clean Water Act Section 311 for Spill Prevention Control and Countermeasure Violations

COMPLAINT

Legal Authority

1. This is an administrative action for the assessment of civil penalties issued pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1321(b)(6), as amended by the Oil Pollution Act of 1990, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, Title 40 Code of Federal Regulations ("C.F.R.") Part 22 ("Consolidated Rules of Practice" or "Part 22").

2. This Complaint serves as notice that EPA has reason to believe that Respondent has violated the regulations promulgated under Section 311(j) of the CWA, 33 U.S.C. § 1321(j), and codified at 40 C.F.R. Part 112 governing the requirements to prevent the discharge of oil. This Complaint also serves as notice of Respondent's opportunity to file an Answer to this Complaint and to request a hearing on the proposed penalty assessment.

Parties

3. The authority to act under Section 311(b) of the CWA, 33 U.S.C. § 1321(b), is vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”). The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, who in turn has delegated it to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7 (Complainant) with concurrence of the Regional Counsel.

4. The Respondent is Lake Burger Holdings, LLC, ("Lake Burger") a self-service gas dock and restaurant doing business in the state of Missouri. The Respondent's business address is 29475 Mill Creek Marina Road, Gravois Mills, Missouri, 65037.

Statutory And Regulatory Framework

5. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), provides for the regulation of onshore facilities to prevent or contain discharges of oil. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), provides in part that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges."

6. To implement Section 311(j), 33 U.S.C. § 1321(j), EPA promulgated regulations to prevent oil pollution. These regulations, codified at 40 C.F.R. Part 112, set forth the requirements for the preparation and implementation of a Spill Prevention Control and Countermeasure Plan ("SPCC Plan").

7. More specifically, under the authority of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), 40 C.F.R. Part 112 establishes procedures, methods, equipment, and other requirements to prevent the discharge of oil from non-transportation related onshore facilities into or upon the navigable waters of the United States or adjoining shorelines.

8. The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products, which due to their location, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines.

9. Under 40 C.F.R. Part 112, owners or operators of onshore facilities that have an aboveground storage capacity of more than 1,320 gallons of oil, and 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, must prepare a SPCC Plan in writing and in accordance with 40 C.F.R. § 112.7.

Factual Allegations

10. Respondent is a Missouri limited liability company registered to conduct business in Missouri.

11. 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.

12. At all times relevant to this action, Respondent was the owner and/or 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 Lake Burger, which includes a self-service gas dock and above ground storage tanks in Morgan County, Missouri.
13. Lake Burger's above ground storage tanks are located 215 feet from the shoreline of the Lake of the Ozarks with approximately 255 feet of the fuel lines directly over the Lake of the Ozarks.
14. The Lake of the Ozarks was created in 1931 after completion of the Bagnell Dam on the Osage River and covers approximately 55,000 acres.
15. The Lake of the Ozarks is currently used, or was used in the past, or may be susceptible to use in interstate or foreign commerce, and is a traditional navigable water, and therefore a "navigable water" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
16. The Lake of the Ozarks is an impoundment of the Osage River and therefore a "navigable water" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
17. The Osage River is a perennial stream that flows continuously year-round into, through, and out of the Lake of the Ozarks into the Missouri River. During the 18th and 19th centuries, steamboats and small watercraft traveled the Osage River transporting metal, timber, and other trade goods.
18. The Osage River is a traditional navigable water and is therefore a "navigable water" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7). In the alternative, the Osage River is a relatively permanent water with a continuous surface connection to the Missouri River.
19. The Missouri River is a traditional navigable water and is therefore a "navigable water" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
20. At all times relevant to this action, Lake Burger had an estimated aggregate above-ground storage capacity of 15,000 gallons of gasoline fuel.
21. Gasoline fuel is a form of oil as defined by Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2.
22. Lake Burger is a "non-transportation-related" facility within the meaning of Appendix A of 40 C.F.R. § 112, as incorporated by reference within 40 C.F.R. § 112.2.
23. Lake Burger is 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.

24. Lake Burger is a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity and, therefore, is an SPCC-regulated facility.

25. At all times relevant to this action, the Respondent did not have an SPCC Plan at Lake Burger.

Violation

26. The facts stated in Paragraphs 1 through 25 above, are herein incorporated.

27. 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated facility prepare a written SPCC Plan in accordance with 40 C.F.R. § 112.7 and any other applicable section of 40 C.F.R. Part 112.

28. On May 15, 2024, EPA inspected the facility and found that Respondent had failed to prepare an SPCC plan for the facility and did not have a plan at any time relevant to this action.

29. Respondent's failure to prepare and implement an SPCC plan for the facility was a violation of 40 C.F.R. § 112.3.

Relief

30. Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), authorizes the administrative assessment of civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum total penalty of \$125,000. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule of 2022, 40 C.F.R. § 19.4, civil administrative penalties of up to \$23,647, per day for each day during which a violation continues, up to a maximum of \$295,564, may be assessed on or after January 8, 2025, for violations of CWA Section 311, 33 U.S.C. § 1321, that occur after November 2, 2015.

31. Based on the forgoing 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), and 40 C.F.R. § 19.4, the Complainant proposes that the Administrator issue a Final Order assessing administrative penalties in the amount of **Fourteen Thousand Four Hundred and Forty-Four Dollars (\$14,444)**.

32. The penalties proposed in this Complaint are based upon the best information available to EPA at the time that the Complaint was issued. The penalty may be adjusted if the Respondent establishes bona fide issues of ability to pay, or other defenses relevant to the appropriate amount of the proposed penalty.

33. The violations of the Oil Pollution Prevention regulations alleged above represent significant violations of the CWA because failure to maintain and fully implement an adequate SPCC plan leaves a facility unprepared to deal with an oil spill and to prevent a spill from having potentially serious human health and environmental consequences. The duration of the violations was extensive. The proposed penalty considers the seriousness, nature, circumstances, extent, and gravity of the violation, or violations, and Respondent's prior compliance history, the degree of culpability for the cited violations, any economic benefit or savings accruing to Respondent resulting from the violations, Respondent's ability to pay the proposed penalties, and such other matters as justice may require.

NOTICE OF OPPORTUNITY FOR HEARING

Answer and Request for Hearing

34. Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), and 40 C.F.R. § 22.14, notice is hereby given that Respondent has the right to request a hearing on any material fact alleged raised in this Complaint and on the appropriateness of any proposed penalty. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22. Members of the public, to whom EPA is obliged to give notice of this proposed action, have a right under Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), to comment on any proposed penalty and to be heard and to present evidence at the hearing.

35. Respondent's Answer must comply with 40 C.F.R. § 22.15 and must be filed with the Regional Hearing Clerk at the address listed below within thirty (30) days after service of the Complaint. To be entitled to a hearing, Respondent must include its request for a hearing in its Answer to the Complaint.

36. The original and one copy of the Answer, as well as a copy of all other documents which Respondent files in this action, must be sent to:

Regional Hearing Clerk
EPA - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
r7_Hearing_Clerk_Filings@epa.gov

37. To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to hearing, Respondent's Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with respect to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in this Complaint. The answer shall also state (a) the circumstances or arguments which are alleged to constitute the grounds of defense; (b) the facts that Respondent disputes; (c) the basis for opposing any proposed relief; and (d) whether a hearing is requested, pursuant to 40 C.F.R. § 22.15.

38. Failure to admit, deny, or explain any material factual allegation in this Complaint constitutes an admission of the allegation, pursuant to 40 C.F.R. § 22.15.

39. A hearing upon the issues raised by this Complaint and the answer may be held if requested by Respondent in the answer. If Respondent does not request a hearing, the Presiding Officer may hold a hearing if issues appropriate for adjudication are raised in the answer.

40. In any hearing on the proposed penalty for this Complaint, members of the public, to whom the EPA is obligated to give notice of this proposed penalty action, will have the right, under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), and 40 C.F.R. § 22.45, to be heard and present evidence on the merits of the proposed CWA penalty assessment. If no hearing is held, the EPA will issue a Final Order assessing administrative penalties pursuant to the CWA, and only members of the public who submitted timely comments on the proposed penalty assessment will have an additional thirty (30) days to petition to set aside the said Final Order and to hold a hearing thereon. The EPA will grant the petition and will hold a hearing only if the petitioners' evidence is material and was not considered by the EPA in the issuance of the Final Order.

41. Any hearing that is requested shall be held and conducted in accordance with the "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.

42. If Respondent fails to file a written answer within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing, they may be found in default. Such default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalties proposed herein shall become due and payable unless the record clearly demonstrates that the requested relief is inconsistent with the CWA.

43. If Respondent does not contest the findings and assessments set forth above, payment of the penalty assessed herein may be remitted as described below:

Pay the Assessed Penalty and any interest, fees, and other charges due using any method provided on the EPA website <https://www.epa.gov/financial/makepayment> (and for additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>).

When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number that appears on the Final Order assessing administrative penalties.
- b. Indicate the payment is payable to "Treasurer, United States of America" and identify the payment with "Oil Spill Liability Trust Fund-311" and "Oil Spill Liability Trust Fund – 311" or "OSLTF – 311."

- c. Concurrently or within 24 hours after payment, email proof of payment to each of the following:

Emily Quinn
U.S. Environmental Protection Agency, Region 7
Via electronic mail to: quinn.emily@epa.gov [Complainant designates this individual for service of proof of payment]

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7 Via electronic mail to:
R7_Hearing_Clerk_Filings@epa.gov
[Include underscore between “R7” and “Hearing” and between “Hearing” and “Clerk”]

U.S. Environmental Protection Agency Cincinnati Finance Center
Via electronic mail to: CINWD_AcctsReceivable@epa.gov
[Include underscore between “CINWD” and “AcctsReceivable”]

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the Final Order and Respondent’s name.

Continued Compliance Obligation

44. Neither assessment nor payment of a civil penalty pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), shall affect Respondent’s continuing obligation to comply with the CWA, the regulations promulgated thereunder, or any other applicable requirements of Federal, State, or local law.

Informal Settlement Conference

45. Whether or not a hearing is requested, an informal settlement conference may be arranged at Respondent’s request. To request a settlement conference, please contact:

Emily Quinn
Attorney-Advisor
U.S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
Telephone: (913) 551-7624
Email: quinn.emily@epa.gov

46. A request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted.

47. The EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement. If settlement is reached, the parties will enter into a written Consent Agreement, and a Final Order will be issued. The issuance of such a Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein.

Public Notice

48. Pursuant to Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), and 40 C.F.R. § 22.45 the Complainant will provide public notice before assessing a civil penalty. Such notice shall be provided within 30 days following proof of service of this Complaint on the Respondent.

For the Complainant, United States Environmental Protection Agency Region 7:

DAVID
COZAD

Digitally signed by DAVID
COZAD
Date: 2025.04.16
12:35:33 -05'00'

David Cozad
Director
Enforcement and Compliance Assurance Division

EMILY
QUINN

Digitally signed by EMILY
QUINN
Date: 2025.04.16
13:21:28 -05'00'

Emily Quinn
Attorney-Advisor
Office of Regional Counsel

Certificate Of Service

I certify that on the date noted below I delivered a true and correct copy of this Complaint and Notice of Opportunity for Hearing by electronic mail to the Regional Hearing Clerk:

U.S. Environmental Protection Agency
R7_Hearing_Clerk_Filings@epa.gov

I further certify that on the date noted below I sent a true and correct copy of the signed original Complaint and Notice of Opportunity for Hearing and a copy of the 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, to the following person:

By certified mail return receipt requested to:

Zane G. Williams, Registered Agent
Attorney at Law
The Williams Law Firm
16533 North State Highway 5, Ste 301
Sunrise Beach, Missouri 65079
Zane@WilliamsLawOffice.us

Date

Carrie
Venerable

Signature

Digitally signed by Carrie
Venerable
Date: 2025.04.16
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