

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1



In the matter of)
)
Pepperell, LLC)
)
550 Lisbon Street)
Lewiston, Maine 04240)
)
Respondent.)

Docket No. CWA-01-2026-0030

ADMINISTRATIVE COMPLAINT

COMPLAINT
FINDINGS OF VIOLATION, NOTICE OF PROPOSED
ASSESSMENT OF A CIVIL PENALTY, AND
NOTICE OF OPPORTUNITY TO REQUEST A HEARING

I. Preliminary Statement

1. This is a proceeding to assess administrative civil penalties under the Clean Water Act for an oil spill to navigable waters. The assessment is proposed for the alleged violations under Sections 309(g) and 311(b)(6) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. §§ 1319(g) and 1321(b)(6), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.
2. Complainant is the Director of the Enforcement and Compliance Assurance Division, Region 1, U.S. Environmental Protection Agency (“Complainant” or “EPA”).
3. Respondent is Pepperell, LLC (“Respondent”), a corporation organized under the laws of the State of Maine with its headquarters located at Auburn, Maine. Respondent is the owner and operator of the historic Pepperell Mill Complex, a former textile mill

converted into commercial space, located at 550 Lisbon Street, Lewiston, Maine (the “Facility”), where an oil spill occurred on November 1, 2023.

II. General Allegations

4. Respondent is a Maine corporation and, therefore, is a “person” within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5).
5. Complainant alleges that Respondent:
 - i. violated Section 311(b)(3) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1321(b)(3), by discharging oil into waters of the United States;
 - ii. failed to comply with the Oil Pollution Prevention regulations that implement CWA Section 311(b)(3), set forth at 40 C.F.R. Part 112, and therefore violated Section 311(j) of the CWA, 33 U.S.C. § 1321(j);
 - iii. violated Section 308 of the CWA, 33 U.S.C. § 1318, by failing to timely respond to EPA’s Request for Information regarding the oil discharge.

III. Jurisdiction

6. EPA takes this action under the authority of Sections 309(g) and 311(b)(6) of the CWA, 33 U.S.C. §§ 1319(g) and 1321(b)(6), as amended by the Oil Pollution Act of 1990.

IV. Statutory and Regulatory Framework

i. Discharge of Oil into Navigable Waters

7. 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).

8. 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”).
9. Section 311(b)(6)(A)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(A)(i), provides for the assessment of penalties for owners, operators, or persons in charge of onshore facilities from which oil or a hazardous substance is discharged in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).
10. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), defines “person” to include “an individual, firm, corporation, association, [or] partnership.”

ii. Oil and Hazardous Substances Liability

11. Section 311(j)(1) of the CWA, 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 and hazardous substances . . . from onshore and offshore facilities, and to contain discharges...”
12. Under the authority of Section 311(j)(1) of the CWA, the Oil Pollution Prevention regulations, found at 40 C.F.R. Part 112, 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 which, 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).

13. Under 40 C.F.R. § 112.3(a)(1), an owner or operator of an onshore facility that became operational prior to August 16, 2002 and that has discharged or, due to its location, could reasonably be expected to discharge, oil in harmful quantities unto or upon the navigable waters of the United States must prepare and fully implement a Spill Prevention, Control, and Countermeasure (“SPCC”) plan in accordance with 40 C.F.R. § 112.7.
14. Under 40 C.F.R. § 112.8(c)(2), all bulk storage tank installations must be constructed so that there is a secondary means of containment for the entire capacity of the largest single container. Dikes areas must be sufficiently impervious to contain discharged oil.
15. Section 311(b)(6)(A)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(A)(ii), provides for the assessment of penalties for violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), and the Oil Pollution Prevention regulations, found at 40 C.F.R. Part 112.

iii. Issuance of CWA Information Request

16. Section 308(a) of the CWA, 33 U.S.C § 1318(a), authorizes EPA to require the submission of any information required to carry out the objectives of the Act. These authorities have been delegated to the EPA Region 1 Administrator, and in turn, to the Director of the EPA Region 1 Enforcement & Compliance Assurance Division.
17. Section 309(g) of the CWA, 33 U.S.C. § 1319, provides for the assessment of penalties

for violations of Section 308 of the CWA, 33 U.S.C. §§ 1318.

V. Allegations of Facts and Violations

Count 1 – Discharge of Oil into Waters of the United States

18. Paragraphs 1 through 17 are incorporated herein by reference.
19. On November 1, 2023, a delivery truck from Fielding’s Oil and Propane Company (“Fielding’s Oil”) arrived at the Facility for a delivery of heating oil at the Respondent’s request. The delivery truck driver from Fielding’s Oil (the “Driver”) entered the Facility, checked the heating oil tank’s gauge and preset the meter on the delivery truck to fill up the tank to its 90 percent capacity.
20. Because the tank’s gauge and overflow alarm were malfunctioning, the tank was overfilled and oil spilled out of the top of the tank. Approximately 1,000 gallons of oil breached the tank’s spill containment, entered the city stormwater drainage and continued into an adjacent canal that flows to the Androscoggin River.
21. The boiler oil tank is considered 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.
22. The release of heating oil from Respondent’s boiler oil tank on November 1, 2023, constitutes a “discharge” as defined by Section 311(a)(2) of the Act, 33 U.S.C. § 1321(a)(2) of “oil,” as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).
23. The waters listed in Paragraph 20, supra, are “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. §120.2 and are therefore subject to the jurisdiction of Section 311 of the Act, 33 U.S.C. § 1321.

24. Thus, the November 1, 2023, release constitutes a discharge of oil that “may be harmful,” pursuant to 40 C.F.R. § 110.3, in violation of Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

Count 2 – Failure to Maintain and Fully Implement a
Spill Prevention, Control and Countermeasure Plan

25. Paragraphs 1 through 24 are incorporated herein by reference.

26. At all times relevant to the allegations in this Complaint, Respondent engaged in storing, using, and consuming “oil” or oil products located at the Facility within the meaning of 40 C.F.R. § 112.2.

27. At all times relevant to the allegations in this Complaint, the Facility had an aboveground oil storage capacity greater than 1,320 gallons in containers each with a shell capacity of at least 55 gallons, within the meaning of 40 C.F.R. § 112.1.

28. The Facility 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 because it is located on land within the United States.

29. The Facility became operational prior to August 16, 2002, within the meaning of 40 C.F.R. § 112.3.

30. The Facility is a “non-transportation-related” facility within the meaning of Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2, because it is a commercial facility that uses and stores oil.

31. The topography leading from the Facility to the adjacent canal and the Androscoggin River presents a clear path into navigable waters.

32. The canal and Androscoggin River are “navigable waters of the United States” and are subject to the jurisdiction of Section 311 of the CWA, 33 U.S.C. § 1321, as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and § 40 C.F.R 120.2.
33. Based on the allegations in paragraphs 24 through 31 above, Respondent is the owner and/or operator of a non-transportation-related facility engaged in storing, using, 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.
34. During an EPA inspection on December 5, 2023, Respondent was unable to produce an SPCC Plan for the Facility.
35. In addition, based on the release of oil from the boiler room, EPA has determined that Respondent did not have adequate secondary containment for the oil tank that was sufficiently impervious to contain a discharge of oil from at least November 1, 2023, to present.
36. Thus, for more than 800 days from November 1, 2023, to date, Respondent failed to develop and maintain and implement an SPCC Plan and failed to maintain adequate secondary containment at the Facility to prevent oil spills from reaching navigable water in violation of Section 311(j) of the CWA, 33 U.S.C. § 1321(j).

Count 3 – Failure to Comply with CWA Information Request

37. Paragraphs 1 through 36 are incorporated herein by reference.
38. On January 26, 2024, EPA sent Respondent a Request for Information Pursuant to Sections 308 and 311(m) of the Clean Water Act (“Information Request”), 33 U.S.C. §§

- 1318(a) and 1321(m), via both email and certified mail seeking information on the November 1, 2023, oil discharge and requested a response within 30 days of receipt.
39. Hardcopies of the Information Request were received by Respondent on February 5, 2024, and by Respondent's registered agent, Attorney Michael Dubois, on February 16, 2024. Counsel for Complainant spoke with Attorney Dubois on March 25, 2024, confirming his receipt of the Information Request.
40. Respondent was required to respond to the Information Request by March 6, 2024.
41. Respondent did not respond to the Information Request for more than 14 months thereafter until it finally responded on June 30, 2025.
42. Respondent has therefore been in violation of Section 308 of the CWA, 33 U.S.C. §§ 1318(a), for more than 450 days.
43. Respondent's failure to respond to the Information Request in a timely manner constitutes a violation of Section 308 of the CWA.

VI. Conclusions of Law

44. Respondent's discharge of oil into navigable waters of the U.S. in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3 is a violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).
45. Respondent's failure to develop, maintain and implement an SPCC Plan and have adequate secondary containment around its boiler oil tank since November 1, 2023 to date is a violation of Section 311(j) of the CWA, 33 U.S.C. § 1321(j).
46. Respondent's failure to timely respond to EPA's Information Request by March 6, 2024 is a violation of Section 308 of the CWA, 33 U.S.C. §§ 1318(a).

VII. Relief Sought: Civil Penalty

47. Complainant requests the assessment of a civil penalty of up to \$295,564, the statutory maximum penalty amount for CWA Section 311(b)(6)(B)(ii) Class II administrative penalties,¹ taking into account the statutory penalty factors at Sections 309(g)(3) and 311(b)(8) of the CWA, 33 U.S.C. §§ 1319(g)(3) and 1321(b)(8). Respondent's discharge of oil into waters of the United States represents a significant violation of the Act because the oil discharge may adversely affect navigable waters, shorelines, vegetation, habitat for fish and wildlife, as well as provide a threat to human health and safety. Similarly, Respondent's alleged violation of the Oil Pollution Prevention regulations represents a significant violation of the Act because failing to fully prepare and implement an adequate SPCC plan leaves a facility unprepared to deal with an oil spill or to prevent potentially serious environmental consequences from an oil spill. Furthermore, Respondent's failure to timely respond to the Information Request has prevented EPA from being able to determine whether Respondent had remedied the alleged violations.
48. Counsel for Complainant has informed Respondent multiple times that if Respondent has a limited ability to pay a civil penalty, Respondent needs to provide Complainant with the financial information necessary for EPA to determine the Respondent's ability to pay a penalty. To date, Respondent has not raised an inability to pay claim nor provided Complainant with financial information to justify the claim.

¹ See 40 C.F.R. § 19.4. The reporting violation alleged in Count 3 carries a higher statutory maximum penalty amount of \$342,218 applicable to CWA Section 309(g)(2)(B) Class II administrative penalties. *See id.*

VIII. Opportunity to Request a Hearing and File an Answer

49. In accordance with Sections 309(g) and 311(b)(6)(B) of the CWA, 33 U.S.C. §§ 1319(g) and 1321(b)(6)(B), and 40 C.F.R. § 22.14, Respondent has the right to request a formal hearing to contest any material fact alleged in this Complaint, or to contest the appropriateness of the proposed penalty.

50. To request a hearing, Respondent must file a written Answer within thirty (30) days of Respondent's receipt of this Complaint. Respondent shall send the Answer to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square – Suite 100 (Mail Code: 4-MO)
Boston, MA 02109-3912
r1_hearing_clerk_filings@epa.gov

51. Respondent shall serve copies of the Answer and any subsequent pleadings that Respondent files in this action to the following address:

Jaegun Lee, Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square – Suite 100 (Mail Code: 4-WD)
Boston, MA 02109-3912
(617) 918-1511
Lee.Jaegun@epa.gov

52. Any such hearing would be conducted in accordance with the Consolidated Rules , 40 C.F.R. Part 22. *See* 40 C.F.R. § 22.15 for the required contents of the Answer.

53. Should Respondent request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a

right under Section 311(b)(6)(C)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(C)(ii), to be heard and to present evidence on the appropriateness of the penalty assessment.

IX. Default Order

54. Respondent may be found to be in default pursuant to 40 C.F.R. § 22.17 if the Respondent fails to file a timely Answer to the Complaint. For the purposes of this action only, default by Respondent would constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. Any penalty assessed in the default order would be due and payable by Respondent without further proceedings after the default order becomes final under 40 C.F.R. § 22.27(c).

X. Settlement Conference

55. Respondent may confer informally with EPA concerning the alleged violations. Such a conference provides Respondent with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. Any settlement would be made final by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer of EPA Region I.

56. Please note that a request for an informal settlement conference does not extend the period for filing a written Answer. To explore the possibility of settlement in this matter, Respondent should contact Jaegun Lee, Enforcement Counsel, at (617) 918-1551. Pursuant to 40 C.F.R. § 22.5(c)(4), Jaegun Lee is authorized to receive service on behalf of EPA at the address listed above in Paragraph 51. Pursuant to 40 C.F.R. § 22.5(b)(2), EPA consents to service by email at Lee.Jaegun@epa.gov.

XI. General Provisions

57. Respondent has a right to be represented by an attorney at any stage of these proceedings.

58. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act or regulations promulgated thereunder.

59. Neither assessment nor payment of an administrative civil penalty pursuant to the Act will affect Respondent's continuing obligation to comply with the Act, and with any regulations promulgated, or orders issued, pursuant thereto.

FOR COMPLAINANT:

James Chow, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 1

dated via electronic signature