



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

NOV 29 2012

RECEIVED

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EPA ORC WS
Office of Regional Hearing Clerk

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 Harbor Fuel Oil Corporation
Docket No. CWA-01-2012-0081

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: John J. Stackpole, President, Harbor Fuel Oil Corporation

In the Matter of Harbor Fuel Oil Corporation
Docket No. CWA-01-2012-0081

CERTIFICATE OF SERVICE

I certify that the foregoing ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING was sent to the following persons, in the manner specified, on the date below:

Original and one copy
hand-delivered:

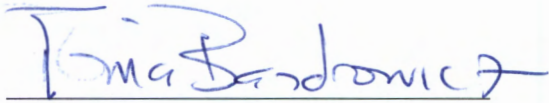
Wanda Santiago,
Regional Hearing Clerk
U.S. EPA – Region I
5 Post Office Square, Suite 100
Mail Code: ORA18-1
Boston, MA 02109-3912

Copy by certified mail,
return receipt requested:

John J. Stackpole, President
Harbor Fuel Oil Corporation
10 Airport Road
P. O. Box 1400
Nantucket, MA 02554

Dated: _____

11/29/12



Tonia Bandrowicz
Senior Enforcement Counsel
U.S. EPA – Region I
5 Post Office Square, Suite 100
Mail Code: OES04-3
Boston, MA 02109-3912
671-918-1734
bandrowicz.toni@epa.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED

NOV 29 2012

EPA ORC WS
Office of Regional Hearing Clerk

IN THE MATTER OF:

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

Harbor Fuel Oil Corporation
10 Airport Road
Nantucket, MA 02554

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

Respondent.

) Docket No. CWA-01-2012-0081
)
)

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 "CWA"), 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 CWA, 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 Harbor Fuel Oil Corporation ("Respondent") 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) of the CWA, 33 U.S.C. § 1321(j), and other provisions of the CWA, 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 CWA, 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 . . .”

4. Under the authority of Section 311(j)(1) of the CWA, 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 CWA, 33 U.S.C. § 1321(j)(5), provides that the President, as delegated to EPA, 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 . . . 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 CWA, 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, Harbor Fuel Oil Corporation, a corporation organized under the laws

of Massachusetts, with a principal place of business in Nantucket, Massachusetts, 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.

8. Respondent is the “operator,” as that term is defined in Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of an oil storage and distribution facility located at the southwest corner of Salem Street and New Whale Street in Nantucket, Massachusetts (“the Facility”).

9. According to the Facility’s FRP, the Facility has been in operation since 1947.

10. Respondent is 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 CWA, 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 Nantucket Harbor, which is connected to the Nantucket Sound in the Atlantic Ocean, all of which are “navigable waters” of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

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

15. As the 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 quantities that may be harmful, as defined in 40 C.F.R. § 110.3, to navigable waters of the

United States, Respondent is 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 Respondent could reasonably be expected to cause substantial harm to the environment by discharging oil into or on navigable waters or adjoining shorelines, EPA has determined that Respondent is 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 an FRP that addresses the elements listed in the regulation.

19. The EPA Region 1 Office has on file an FRP for the Facility, which had been previously approved by EPA on September 29, 2011.

III. FINDINGS OF VIOLATION

Count 1: Failure to Fully and Adequately Implement a Facility Response Training Program and Drill/Exercise Program

20. The Complaint incorporates Paragraphs 1- 19 above 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 40 C.F.R. § 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’s FRP stated that the program was

developed in accordance with PREP.

23. On March 20, 2012 representatives of EPA, the Massachusetts Department of Environmental Protection (“MADEP”) and the U.S. Coast Guard (“USCG”) conducted an FRP Government-Initiated Unannounced Exercise (“GIUE”) at the Facility under the PREP and determined that Respondent could not properly implement its response plan and that Respondent’s personnel were not adequately trained in implementing the response plan, resulting in an “unsuccessful” overall rating for the exercise.

24. The objective of the GIUE is to determine whether the Respondent can successfully conduct response actions, through emergency notifications and spill response equipment deployment, to mitigate a simulated release of oil. The GIUE rates a particular respondent’s 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 Respondent was rated “unsuccessful” in four out of these five categories.

25. On the date of the inspection and by letter dated May 1, 2012, EPA informed the Respondent that it 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, 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. On July 19, 2012, EPA issued an information request, pursuant to authority under Sections 308 and 311(m) of the CWA, 33 U.S.C. §§ 1308 and 1321(m), requesting information

relating to the SPCC and FRP requirements of the Oil Pollution Prevention regulations, including actions taken by the company to correct the FRP deficiencies noted during the March 20, 2012 GIUE.

27. On August 10, 2012, the Respondent submitted a response to EPA's July 19, 2012 information request in which it resubmitted certain information the company stated it had originally mailed to EPA on or about May 23, 2012 but which EPA had no record of receiving.

28. Based on its review of the information submitted by the Respondent on August 10, 2012, EPA has determined that the Respondent has not provided adequate responses or, in some cases, not provided responses at all, to specific questions in EPA's May 1, 2012 post-GIUE letter and July 19, 2012 information request relating to the actions taken by the Respondent to correct the FRP deficiencies noted during the March 20, 2012 GIUE.

29. Respondent's 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 objectives of the March 20, 2012 GIUE, violates 40 C.F.R. § 112.21(a).

30. Respondent has violated this requirement each day from at least March 20, 2012, the date of the GIUE, to the date of this Complaint.

31. Pursuant to Section 311(b)(6)(B)(ii) of the CWA 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 violation continued, up to a maximum of \$177,500. EPA considers each day that Respondent failed to implement an approved 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 VIOLATIONS

32. Based on the forgoing Findings of Violation, and pursuant to the authority of

Sections 311(b)(6)(B)(ii) and 311(b)(8) of the CWA and 40 C.F.R. § 19.4, the Complainant proposes that a Final Order assessing administrative penalties be issued against Respondent 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 violations, the economic benefit to the violator, if any, resulting from the violations, the degree of culpability involved, any other penalty for the same incidents, any history of prior violations, the economic impact of the penalty on the violator, and any other matters as justice may require.

33. Respondent's violations of the Oil Pollution Prevention regulations alleged above represent significant violations of the CWA because failure to fully prepare and implement an adequate FRP 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

34. Respondent may, pursuant to Section 311(b)(6) of the CWA and 40 C.F.R. § 22.15(c), request a hearing on the proposed penalty assessment in its Answer to this Complaint. 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.

35. 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 with:

Wanda Santiago
Regional Hearing Clerk (RAA)
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (ORA 18-1)

Boston, Massachusetts 02109-3912

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:

Tonia Bandrowicz, Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100 (OES 04-3)
Boston, Massachusetts 02109-3912

36. Pursuant to 40 C.F.R. § 22.15, Respondent's 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.

37. Following receipt of the Answer, a Presiding Officer will be assigned. The Presiding Officer will notify the parties of this assignment and shall notify the parties of the time and place of further proceedings in the case.

VI. PUBLIC NOTICE

38. Pursuant to Section 311(b)(6)(C) of the CWA, 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 CWA to be heard and present evidence at the hearing.

VII. SETTLEMENT

39. 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.

40. 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 the address above, or by calling (617) 918-1734.

Date: 11/27/12

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