

US EPA ARCHIVE DOCUMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

Date of Notice: January 10, 2008

Public Notice Number: PN2008-0002

Comment Period: January 11, 2008 - February 11, 2008

Action: Notice of Proposed Assessment of Class II Clean Water Act Section 311(b)(6) Administrative Penalty and Opportunity to Comment

Under Section 311(b)(6)(B)(ii) of the Clean Water Act (“CWA”), 33 U.S.C. § 1321(b)(6)(B)(ii), EPA is authorized to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons public notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Pursuant to 40 C.F.R. Part 19 (Adjustments of Civil Penalties for Inflation) promulgated pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, in a Class II proceeding under 311(b)(6)(B)(ii), the maximum civil penalties that may be administratively assessed have been increased as follows: For violations occurring between January 31, 1997 and March 14, 2004, up to \$11,000 per violation per day for each day during which the violation continues, up to a maximum of \$137,500; and, for violations occurring on or after March 15, 2004, up to \$11,000 per violation per day for each day during which the violation continues, up to a maximum of \$157,500. Class II proceedings are conducted in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits,” at 40 C.F.R. Part 22 (“Part 22”).

The procedures by which the public may submit written comments on a proposed Class II penalty order or participate in a Class II penalty proceeding are set forth in Part 22. The deadline for submitting public comment on a proposed Class II penalty order is thirty (30) days after issuance of public notice.

Pursuant to Section 311(b)(6)(B)(ii), EPA is providing public notice of the following proposed Class II administrative penalty assessment:

Name and Mailing Address of Respondent:

Butler, Maxcy & Heath, Inc.
c/o Alan Heath
P.O. Box 188
329 Common Road
Union, ME 04862

Name and Address of Facility or Site Addressed by Complaint:

Butler, Maxcy & Heath, Inc.
c/o Alan Heath
329 Common Road
Union, ME 04862

Description of Business or Activity Conducted by the Respondent:

Storing/Distributing heating oil

Description of Violations alleged in Complaint: Failure to implement an Spill Prevention Control and Countermeasure ("SPCC") plan at the facility in violation of the Oil Pollution Prevention regulations issued pursuant to Section 311(j) of the CWA. The failure to respond to a request for information by EPA, in violation of Section 308 of the Act, 33 U.S.C. §1318.

Proposed penalty: \$157,500

Name of case: In the Matter of Butler, Maxcy & Heath, Inc.

Docket number: CWA-01-2007-0161

Date Filed with Regional Hearing Clerk: January 9, 2008

Name, Mailing Address, and Telephone Number of Regional Hearing Clerk: Wanda Rivera, U.S. EPA, Region I, One Congress Street, Suite 1100, Mail Code MCS, Boston,

Massachusetts 02114; (617) 918-1113.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of Part 22, review the complaint or other documents filed by the parties in this proceeding, comment upon the proposed penalty assessment, or participate in any hearing that may be held, should contact the Regional Hearing Clerk identified above. Unless otherwise noted, the public record for the proceeding is located in the EPA Regional Office at One Congress Street, Boston, Massachusetts, and the file will be open for public inspection during normal business hours.

In order to provide opportunity for public comment, EPA will not take final action in this proceeding prior to thirty (30) days after issuance of this notice.