



For a thriving New England

CLF Massachusetts 62 Summer Street
Boston MA 02110
P: 617.350.0990
F: 617.350.4030
www.clf.org

May 19, 2021

Via Registered Mail and Certified Mail, Return Receipt Requested

Steven Cipullo
Terminal Manager, Sprague Twin Rivers
Technology (TRT) Terminal
740 Washington Street
Quincy, MA 02169

Corporation Service Company
84 State Street
Boston, MA 02109

Sprague Operating Resources LLC
185 International Drive
Portsmouth, NH 03801

Sprague Resources GP LLC
185 International Drive
Portsmouth, NH 03801

RE: Notice of Intent to File Suit for Violations of the Resource Conservation and Recovery Act and Clean Water Act at the Terminal

To Whom It May Concern:

Conservation Law Foundation (“CLF”)¹ hereby notifies Sprague Operating Resources LLC and Sprague Resources GP LLC (hereinafter, “Sprague”) of its intent to commence a civil action under Section 505 of the Clean Water Act, 33 U.S.C. § 1365 and Section 7002(a)(1)(B) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6972(a)(1)(B), for violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and RCRA, 42 U.S.C. § 6901 *et seq.*, at Sprague’s bulk storage and fuel terminal located at 740 Washington Street, Quincy, MA (the “Terminal”). Unless Sprague adequately resolves the violations of RCRA and the Clean Water Act described herein, CLF intends to file suit against Sprague in the United States District Court for the District of Massachusetts to secure appropriate relief under federal and state law for these violations.

The Terminal’s waterside containment berm has been eroded by wave action and is at risk of catastrophic failure in severe weather. Moreover, the condition of the Terminal’s containment berms makes clear that the Sprague has not designed, maintained, modified, and/or operated its Terminal to account for the impacts and risks of severe weather including those associated with climate change. Sprague’s infrastructure and operational failures at the Terminal put CLF’s members, the Quincy community, and their natural resources at great risk and violate RCRA and the Clean Water Act because they essentially guarantee flooding, unpermitted discharges, and widespread contamination.

¹ CLF is a 501(c)(3) nonprofit, member-supported organization dedicated to the conservation and protection of New England’s environment.

I. The Terminal

Sprague, acting through officers, managers, subsidiary companies, and instrumentalities, owns or has owned and/or operates or has operated the Terminal, which consists of a “tank farm,” a pipeline, a marine terminal, buildings, and infrastructure located at 740 Washington Street, Quincy, MA. The Terminal is located at the confluence of the Town River and Weymouth Fore River.

The Terminal is engaged in the receipt, storage, and wholesale distribution of petroleum products, vegetable oil, glycerin, tallow, caustic soda, and red dye. The facility is 10 acres in size and contains ten above-ground storage tanks with capacities between 1 million and 4.2 million gallons, and two smaller above-ground storage tanks. Sprague stores No. 2 fuel oil and diesel fuel in four tanks and leases six tanks to the adjoining Twin Rivers Technology facility holding vegetable oil, glycerin, and beef tallow. The Terminal receives product at the marine terminal area it shares with the Twin River Technologies facility and distributes it either via pipeline to the Twin Rivers Technology facility or via trucks.

The Terminal’s bulk storage tank farm is surrounded by a single earthen or concrete berm and some of the tanks have second, individual containment berms. According to the Terminal’s recent draft National Pollutant Discharge Elimination System (“NPDES”) permit (“Draft Permit”), stormwater is collected in the containment area around Tank 8 either via gravity or by manually operated pumps from around other tanks. Stormwater from around the truck loading rack and parking areas is collected in a 10,000-gallon underground retention tank and then pumped into the tank farm. Collected stormwater is manually pumped to an oil water separator after a visual inspection for petroleum products. From there, stormwater is pumped via a single outfall into the Town River.

Sprague is a generator of hazardous waste at the Terminal and is categorized as a Very Small Quantity Generator of hazardous waste. It has contributed to the past or present handling, storage, treatment, transportation, or disposal of hazardous waste, as that term is defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and solid waste, as that term is defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), at the Terminal, which may present an imminent and substantial endangerment to health or the environment.

Based on the information currently available to CLF, the following pollutants are present at the Terminal: petroleum hydrocarbons and other constituents including but not limited to toxic chemicals, such as, benzene, polycyclic aromatic hydrocarbons, and toluene.

The Federal Emergency Management Agency (“FEMA”) flood map for the area where the Terminal is located, which was last revised in June 2014, shows that the entire Terminal is within a Special Flood Hazard Area (SFHA) subject to inundation by a 1% annual chance flood (i.e., a 100-year flood or “base flood”). The Terminal is adjacent to and bordered by a VE² zone on the Town River, also referred to as a coastal high hazard area, making the terminal vulnerable to high velocity water including waves as well as wave effects 3 feet or greater.

² The designation of VE corresponds to the 1% annual chance coastal floodplains that have additional hazards associated with wave action.

An examination of the Terminal by CLF revealed that the Terminal’s water-side containment berm has not been maintained and is at substantial risk of failure. The land between the berm and the Town River has eroded by at least ten feet since construction. The erosion has undermined the containment berm, as evidenced by settling of the upper surface, scalloped ground area, and material loss. As a result of the erosion damage, the containment berm is unstable and cannot be relied upon to provide suitable containment let alone protection against storm-related risks of flooding and wave action.

II. Severe Weather, Climate Change, and Quincy

The present flood risks at the Terminal demonstrated by the FEMA map are, and will continue to be, exacerbated by sea level rise, increased precipitation, increased magnitude and frequency of storm events, and increased magnitude and frequency of storm surges—all of which are, and will continue to become, worse as a result of climate change. According to the Fourth National Climate Assessment, “The frequency of dangerous coastal flooding in the Northeast would more than triple with 2 feet of sea level rise.”³ Since 1900, sea level has already risen approximately one foot in the Northeast, at a rate that is three to four times higher than the global average.⁴ From 1895 to 2011, the Northeast sustained a temperature increase of 2°F and a 10% increase in precipitation (5 inches), and from 1958 to 2016, “the number of heaviest 1% precipitation events (that is, an event that has a 1% chance of occurring in any given year) in the Northeast has increased by 55%.”⁵ The location, elevation, and failure to operate, maintain, or design infrastructure at the Terminal to account for the impacts associated with climate change make it especially vulnerable.

Sea level trends along the Northeast Atlantic “have been higher than the global rate over the last several decades, capped by a recent multiyear jump in sea level beginning in 2009.”⁶ This trend is projected to continue.⁷

The City of Quincy, specifically the Terminal, is directly at risk from these impacts. The City has already suffered substantially from the effects of climate change.⁸ Quincy has the fifth highest number of repetitive loss flood claims in the Commonwealth of Massachusetts.⁹ In 2019,

³ Ellen L. Mccray, et al., *Northeast*, in 2 FOURTH NATIONAL CLIMATE ASSESSMENT: IMPACTS, RISKS, AND ADAPTATIONS IN THE UNITED STATES 669, 713 (David Reidmiller et al., eds., U.S. Global Change Research Program) (2018).

⁴ Radley Horton et al., *Northeast*, in CLIMATE CHANGE IMPACTS IN THE UNITED STATES: THE THIRD NATIONAL CLIMATE ASSESSMENT 371, 373 (Jerry M. Melillo et al., eds., U.S. Global Change Research Program) (2014).

⁵ Mccray, *supra* note 3, at 713.

⁶ NOAA, *Global & Regional Sea Level Rise Scenarios for the U.S.*, at 9 (Jan. 2017), https://tidesandcurrents.noaa.gov/publications/techrpt83_Global_and_Regional_SLR_Scenarios_for_the_US_final.pdf.

⁷ *See id.* at vii (“Along regions of the Northeast Atlantic (Virginia coast and northward) and the western Sprague of Mexico coasts, RSL [relative sea level] rise is projected to be greater than the global average for almost all future GMSL [global mean sea level] rise scenarios.”).

⁸ City of Quincy Massachusetts, *City of Quincy Multi-Hazard Mitigation Plan: 5-Year Update* (Apr. 2, 2019) (“Mitigation Plan”).

⁹ *Id.* at 3-13.

the City experienced “record setting flood events and extensive damage to coastal properties.”¹⁰ The City has determined that there is close to a 100% probability of continued coastal and inland flooding every year.¹¹ The City is particularly at risk of storm surge flooding.¹² Quincy estimates that sea levels will rise by over half a foot by 2030 and over one foot by 2050.¹³ The City estimates that the Terminal will be flooded by storms modeled for 2030.¹⁴

The Terminal stores toxic pollutants known to be harmful to humans and aquatic life in an area affected by sea level rise, increased precipitation, increased magnitude and frequency of storm events, as well as increased magnitude and frequency of storm surges—all of which will become, and are becoming, worse as a result of climate change. The first significant storm surge that makes landfall at the Terminal is going to flush hazardous and solid waste from the Terminal into the Town and Fore Rivers and through nearby communities and ecosystems; a significant rise in sea level will put the majority of the Terminal, including soils, groundwater, and treatment works, under water. The Terminal is in close proximity to residential and recreational areas with heavy public use and high habitat functions. Multiple marinas, small boat access points, playgrounds, athletic fields, community walking paths, and publicly accessible open space on both banks of the Town River draw local residents and others to the area. Sprague knows all of this, and yet has failed to disclose required information in its possession and has not taken appropriate steps to protect the public and the environment from this certain risk.

III. Clean Water Act

Sprague operates the Terminal pursuant to the National Pollutant Discharges Elimination System individual permit number MA0028037, issued by the Environmental Protection Agency (the “Permit”). The Permit was issued on May 12, 2011 and is currently in force. On January 25, 2016, Sprague completed its application for reissuance of its permit (the “Application”). On December 4, 2020, EPA issued for public comment a draft revised permit for the Terminal. The public comment period for the draft permit ended on February 2, 2021.

As explained below, the Permit requires Sprague to proactively analyze risks of pollutant discharges at the Terminal and to implement control measures to minimize the risk of unauthorized discharges. Sprague is failing to maintain its containment berms and evidently failing to plan for sea level rise, increased precipitation, increased magnitude and frequency of storm events, and increased magnitude and frequency of storm surges—all of which will become, and are becoming, worse as a result of climate change—that would impact the Terminal and surrounding communities. By failing to address these impacts of climate change, Sprague is neither maintaining nor implementing control measures that will reduce or eliminate the pollutants in the Terminal’s storm water discharges and assure compliance with the Permit, which is a violation of the Permit in itself.

¹⁰ *Id.* at iii.

¹¹ *Id.* at 3-2.

¹² *Id.* at 3-5.

¹³ *Id.* at 3-19.

¹⁴ *Id.* at Maps 5.1E, 5.2E.

A. Clean Water Act Violations

1. *Failure to Implement Best Management Practices to Minimize the Discharge of Pollutants*

The Permit requires that the permittee implement “appropriate best management practices (“BMP”) . . . at the facility to minimize the discharge of pollutants in stormwater to the waters of the United States and to satisfy the non-numeric technology-based effluent limitations in this permit.” Permit § I.C.4. In particular, the Permit requires BMPs “to satisfy the following non-numeric technology-based effluent limitations”:

- b. Good housekeeping measures designed to maintain areas that are potential sources of pollutants.
- c. Preventative maintenance programs to avoid leaks, spills, and other releases of pollutants in stormwater discharged to receiving waters
- e. Erosion and sediment controls designed to stabilize exposed areas and contain runoff using structural and/or non-structural control measures to minimize onsite erosion and sedimentation, and the resulting discharge of pollutants.
- f. Runoff management practices to divert, infiltrate, reuse, contain, or otherwise reduce stormwater runoff.

Id.

Sprague is failing to minimize the potential for discharges of pollutants, in violation of Section I.C.4. and the sub-paragraphs above, by failing to maintain its secondary containment berms, placing the Terminal at greater risk of a catastrophic release during severe weather.

Further, the erosion of the secondary containment berm and Sprague’s failure to properly maintain that berm indicate that Sprague is failing to address the potential for pollutant discharges resulting from sea level rise, increased precipitation, increased magnitude and frequency of storm events, and increased magnitude and frequency of storm surge—all of which will become, and are becoming, worse as a result of climate change.

2. *Failure to Adequately Inspect Structural Controls*

The Permit requires that the permittee conduct quarterly inspections by members of the stormwater pollution prevention team. Permit § I.C.5. Among other things, these inspections include identification of “[a]ny control measures needing maintenance, repairs or replacement” and “[a]ny additional control measures needed to comply with permit requirements.”

Sprague is failing to adequately inspect its structural controls, in violation of Section I.C.5, by failing to maintain its secondary containment berms, placing the Terminal at greater risk of a catastrophic release during severe weather.

3. *Failure to Follow Good Engineering Practices*

The Permit requires the permittee to follow “good engineering practices” in the “the selection, design, and installation of control measures,” including “both structural and non-structural” stormwater controls. Permit § I.C.3.

Sprague is failing to satisfy “good engineering practices, in violation of Section I.C.3. by failing to maintain its secondary containment berms, placing the Terminal at greater risk of a catastrophic release during severe weather.

Further, the erosion of the secondary containment berm and Sprague’s failure to properly maintain that berm indicates that Sprague is not considering the potential for pollutant discharges resulting from sea level rise, increased precipitation, increased magnitude and frequency of storm events, and increased magnitude and frequency of storm surge—all of which will become, and are becoming, worse as a result of climate change. Any reasonable engineer must take these factors into account in designing and implementing control measures for the Terminal.

4. *Failure to Identify Potential Sources of Pollution*

The Permit requires that the SWPPP include “[a] summary of all pollutant sources.” Permit § I.C.3.c. Also, the Permit expressly incorporates “the general provisions for SWPPPs in the most current version of the [Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity [(“MSGP”)].” *Id.* § I.C.3. The 2015 version of the MSGP, which was in force until March 1, 2021, provides that the summary of pollutant sources must “document where potential spills and leaks could occur that could contribute pollutants to stormwater discharges.” 2015 MSGP § 5.2.3.3. The 2021 MSGP includes a substantively identical provision. *See* 2021 MSGP § 6.2.3.3.

On information and belief, Sprague has failed to adequately identify all pollutant sources or document where spills could occur by failing to describe the erosion of the secondary containment berm and the risk of a catastrophic spill, especially in light of the risks posed by the climate change impacts discussed above.

5. *Failure to Amend or Update the SWPPP*

The Permit requires that the permittee:

shall amend and update the SWPPP within 14 days of any changes at the facility that result in a significant effect on the potential for the discharge of pollutants to the waters of the United States. Such changes may include, but are not limited to: a change in design, construction, operation, or maintenance, materials storage, or activities at the facility; a release of a reportable quantity of pollutants as described in 40 CFR § 302; or a determination by the permittee or EPA that the BMPs included in the SWPPP appear to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with industrial activity.

Permit § I.C.6.

On information and belief, Sprague has not amended its SWPPP to reflect that the secondary containment berm is eroding and that therefore its structural controls are ineffective for controlling pollutant discharges.

6. Unlawful Certification

The Permit requires that the permittee “certify, at least annually, that the previous year’s inspections and maintenance activities were conducted, results recorded, records maintained, and that the facility is in compliance with this permit.” Permit § I.C.7.

On information and belief, in light of Sprague’s apparent failures to properly inspect its structural controls, Sprague’s annual certifications are false because they certify that the inspections were in compliance with the Permit despite the inspections’ apparent failure to identify that the secondary containment berm is eroding and that therefore its structural controls are ineffective for controlling pollutant discharges.

7. Failure to Document Permit Violations in the SWPPP

The Permit requires that “[i]f the facility is not in compliance with any aspect of this permit, the annual [SWPPP] certification shall state the non-compliance and the remedies which are being undertaken.” Permit § I.C.7.

On information and belief, in light of Sprague’s apparent failures to properly inspect its structural controls, Sprague is violating Section I.C.7 by failing to identify that the secondary containment berm is eroding and that therefore its structural controls are ineffective for controlling pollutant discharges.

8. Failure to Submit Required Facts or Information to Regulators

The Permit requires that:

The permittee shall notify the U.S. Environmental Protection Agency and the Massachusetts Department of Environmental Protection in writing of any changes in the operations at the facility, including the use of chemical additives and changes which have the potential to cause the maximum design flow rate through the O/W Separator to be exceeded, that may have an effect on the permitted discharge of wastewater from the facility.

Permit § I.A.12.

Sprague has violated Section I.A.12 by failing to disclose the erosion of the berm, Sprague’s failure to maintain the berm, and the resultant increased risk of a catastrophic discharge of pollutants in severe weather, especially in light of the increases in severe weather from climate change discussed above.

9. *Failure to Include Stormwater Flow Estimates in Permit Application*

The regulations governing applications for NPDES permits require that applications include both (i) “a line drawing of the water flow through the facility with a water balance” that shows “average flows at intake and discharge points,” and (ii) “narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and stormwater runoff” that includes “the average flow which each process contributes.” 40 C.F.R. § 122.21(g)(2)-(3); Form 2C. In the case of stormwater-only flows, the applicant is allowed to provide an estimate, along with “[t]he basis for the rainfall event and the method of estimation.” *Id.* § 122.21(g)(3).

Sprague is violating Section 122.21(g) because its Application did not include a water balance, an estimate of average flow, or a description of the basis for that estimate. Without any information on the average stormwater flow from the facility, EPA and the public have no idea how much stormwater is discharging from the Terminal. Sprague’s violation is ongoing and continuous because Sprague has failed to update its Application.

10. *Failure to Describe Structural Controls in Permit Application*

The regulations governing applications for NPDES permits require that applications include a description of “existing structural and nonstructural control measures to reduce pollutants in storm water runoff.” 40 C.F.R. § 122.6(c)(1)(i)(B); Form 2F. The instructions for EPA Application Form 2F, Item 4.3 state: “Structural controls include structures that enclose materials handling or storage areas; structures that cover materials; and berms, dikes, or diversion ditches around manufacturing, production, storage, or treatment units and retention ponds.”

Sprague is violating Section 122.26 because Sprague’s Application does not identify the containment berms as structural controls, despite the clear requirement to do so. Sprague’s violation is ongoing and continuous because Sprague has failed to update its Application.

11. *Failure to Describe Materials Management Practices Employed in Permit Application*

The regulations governing applications for NPDES permits require that applications include a description of “materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these materials with storm water runoff.” 40 C.F.R. § 122.6(c)(1)(i)(B).

Sprague is violating Section 122.26 because Sprague’s Application does not describe its materials management practices. Instead, the application states only that “[t]he facility has prepared and is subject to US EPA SPCC and Federal Response Plan requirements, and has prepared and operates in accordance with its Stormwater Pollution Prevention Plan.” Sprague’s reference to separate documents is insufficient to satisfy the requirement for the *application* to describe the material management practices. Sprague did not attach a copy of any of the referenced documents to its Application. Without this information, EPA and the public do not have adequate information to evaluate the risk of pollutant discharges from the Terminal. Sprague’s violation is ongoing and continuous because Sprague has failed to update its Application.

IV. Resource Conservation and Recovery Act (“RCRA”) Violations

1. Imminent and Substantial Endangerment

CLF intends to include the wastes identified above in its proof of Sprague’s RCRA violations. To the extent that other hazardous and solid wastes are revealed to be present at the Terminal—a fact that Sprague is in a better position to know than CLF—Sprague is put on notice that CLF also intends to include those other wastes in its proof of Sprague’s RCRA violations.

The hazardous and solid waste at the Terminal is generated, handled, stored, treated, transported and/or disposed of at or near sea level in close proximity to major human population centers—the Germantown and Quincy Point neighborhoods, and the Town and Weymouth Fore Rivers in Quincy. In the face of rising sea levels and increasing major storm events, the Terminal poses an imminent and substantial risk to surrounding communities and the environment.

Sprague has not disclosed its creation of this imminent and substantial risk to the EPA, state regulators, or the public as it relates to the Terminal. Sprague’s failure to disclose has contributed to the imminent and substantial endangerment to health and the environment.

2. Open Dumping

In addition to the hazardous waste discussed above, the petroleum products stored at the Terminal qualify as “solid waste” under RCRA because Sprague’s failure to address the known imminent risks associated with climate change discussed above will result in release of these products when these foreseeable events occur. Sprague’s inaction in the face of known risks of climate change represents an “intent to discard” useful products because the outcome of this inaction is certain to occur.

RCRA prohibits “open dumping” which includes “facilities or practices in floodplains” that “result in washout of solid waste, so as to pose a hazard to human life, wildlife, or land or water resources.” 40 C.F.R. 257.3-1(a). The Terminal is in a 100-year floodplain as determined by FEMA. Inundation by flood waters results in the washout and carrying away of discarded petroleum products and other contaminants. Sprague has taken no steps to prevent flooding and pollution discharges, despite the increasing severity of storms and storm surge caused due to climate change impacts, in violation of RCRA’s open-dumping prohibition.

* * * * *

Sprague’s violations of RCRA are ongoing and continuous. CLF intends to seek a civil injunction, as provided under Section 7002 of RCRA, 42 U.S.C. § 6972, ordering Sprague to make necessary disclosures, to address current and ever-increasing risks of flooding from climate-change-induced storms, and restraining Sprague from further violating RCRA. CLF also intends to seek civil penalties and an award of litigation costs, including attorney and expert witness fees, under Section 7002 of RCRA, 42 U.S.C. § 6972.

V. **OTHER CLAIMS**

The violations of federal law alleged herein also support pendant state law claims sounding in tort, including, but not necessarily limited to, negligence and public and private nuisance. Sprague is specifically put on notice that CLF intends to pursue such claims as warranted.

VI. **CONCLUSION**

During the notice period, CLF is willing to discuss effective remedies for the violations noticed in this letter that may avoid the necessity of litigation. If Sprague wishes to pursue such discussions, please contact CLF within the next 20 days so that negotiations may be completed before the end of the notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the notice period.

Sincerely,



Christopher M. Kilian
Vice President and Director of Strategic Litigation
Conservation Law Foundation
15 East State Street, Suite 4
Montpelier, VT 05602
(802) 223-5992
ckilian@clf.org

Attorney for Conservation Law Foundation, Inc.

cc: Michael S. Regan
Administrator
Environmental Protection Agency
Office of the Administrator, 1101A
1200 Pennsylvania Avenue NW
Washington, DC 20460

Deborah Szaro
EPA Region 1 Acting Administrator
Environmental Protection Agency
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Martin Suuberg
Commissioner

Massachusetts Department of Environmental Protection
1 Winter Street
Boston, MA 02108