

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2009 SEP -9 PM 1:23

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
Fulton Fuel Company) **DECLARATION OF JANE NAKAD**
127 Main Street)
Shelby, Montana 59474)
)
)
Respondent.)

Pursuant to the Order to Show Cause and Order to Supplement the Record issued by the Honorable Elyana R. Sutin, Regional Judicial Officer, on August 20, 2009, ordering the Complainant Environmental Protection Agency (EPA) to supplement the record with respect to its penalty, Jane Nakad, EPA Region 8 Technical Enforcement Program, hereby submits the following Declaration with regard to the penalty in this matter.

I, Jane Nakad, declare as follows:

1. I am employed by the EPA Region 8 Technical Enforcement Program located at 1595 Wynkoop, in Denver, Colorado.
2. As an EPA representative responsible for calculating penalties for violations of §§ 311(b)(3) and (j) of the Clean Water Act (CWA or the Act), I have personal knowledge of the matters set forth in this Declaration.
3. EPA filed an Administrative Complaint and Opportunity to Request Hearing (Complaint) in this matter on February 19, 2008, citing alleged violations of § 311(b)(6)(B)(i) of the Act 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990. The violations were identified at the North Sunburst B Sand Unit, an oil production facility, which

was located in the North Fred and George Creek Field in Toole County, Montana, as the result of a discharge of oil into North Fred and George Creek.

4. The Complaint proposes a penalty of \$32,500 based on the discharge of a harmful quantity of oil into or upon Fred and George Creek and its adjoining shorelines in violation of § 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3) and the alleged violation of § 311(j) of the Act, 33 U.S.C. § 1321(j) for failure to prepare and implement an Spill Prevention Control and Countermeasure (SPCC) Plan for the North Sunburst B Sand Unit Facility (the Facility) in accordance with regulations set out in 40 C.F.R. Part 112.

5. Pursuant to § 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), EPA must consider the seriousness of the violations, the economic benefit to the violator, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

6. The proposed penalty in this matter is consistent with the CWA statutory factors described above.

7. The environmental impact of the Respondent's discharge of approximately 10 barrels (420 gallons) of crude oil was deemed to be moderate as the discharge impacted one mile of Fred and George Creek, but did not impact any endangered species or sensitive ecosystems.

8. EPA promulgated the SPCC rules in 1974 to establish procedures, methods, equipment and other requirements to prevent oil spills from polluting the nation's waters. The

rules require non-transportation related facilities which have greater than 1,320 gallons of oil and the potential to discharge oil to a navigable water to prepare and implement SPCC Plans.

9. Respondent's Facility included at least one 250 barrel (10,500 gallon) crude oil tank, three producing oil wells, and several flowlines containing oil at the time of the discharge.

10. EPA may increase penalties based upon the degree of culpability involved. The Respondent has operated a number of oil and gas production facilities in Montana, and should be familiar with activities and regulations associated with oil and gas production facilities.

11. EPA may increase penalties based upon the owner or operator having a history of noncompliance involving similar violations. There is no known history of prior violations as there is no record that any of the Respondent's facilities have been inspected by EPA. However, after the discharge of oil into Fred and George Creek, EPA informed Respondent of the requirement to prepare and implement an SPCC Plan for the Facility.

12. EPA may increase penalties based upon the degree of culpability involved. The Respondent has operated many oil and gas production facilities in Montana since 1969 (per information in the Montana Online Oil and Gas Information System) and should be familiar with regulations associated with oil and gas production facilities.

13. Respondent failed to prepare and implement an SPCC Plan at its North Sunburst B Sand Unit oil production facility at any time prior to the sale of the Facility on or about January 2005, even after being informed by EPA that an SPCC Plan was required for the Facility.

14. Respondent's failure to prepare and implement pollution prevention measures, such as inspecting and maintaining the facility flowlines directly resulted in the discharge of oil

into Fred and George Creek.

15. EPA may increase or decrease penalties based upon the nature, extent and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge.

Respondent failed to conduct adequate mitigation measures for its discharge of oil into Fred and George Creek in that oil and oil sheens were observed intermittently on at least six occasions during a two year period from February 29, 2004, to May 4, 2006.


16. Respondent did not pay any other penalty for the discharge of oil nor for its failure to prepare an SPCC Plan.

17. I calculated an economic benefit component of \$8,816 for Respondent's failure to prepare an SPCC Plan and for failure to conduct and document inspections of its flowlines from one of which the discharge occurred.

18. Respondent has not indicated that it is unable to pay the proposed penalty amount.

I declare the foregoing to be true and correct to the best of my knowledge, information and belief under penalty of perjury.

Dated: 09/09/2009



Jane Nakad
U.S. EPA, Region 8,
Technical Enforcement Program

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the DECLARATION OF JANE NAKAD were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, and that true copies of the same were sent as follows:

Via hand delivery to:

The Honorable Elyana R. Sutin
Regional Judicial Officer
U.S. EPA Region 8 (8RC)
1595 Wynkoop Street
Denver, CO 80202-1159

and via U.S. first class mail to:

Mr. William M. Fulton, Jr., Registered Agent
Fulton Fuel Company
127 Main Street
P.O. Box 603
Shelby, MT 59474

And

Mr. Richard L. Beatty, Esq.
153 Main Street
P.O. Box 904
Shelby, MT 59474

9/9/09

Date

Judith M. McTiernan

Signature