

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

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2016 DEC -6 AM 9:18
REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of:

**Tabula Rasa Partners, LLC
Houston, Texas**

Respondent

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**EPA Docket No.
CAA-06-2017-3309**

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency, Region 6 (“EPA” or “Complainant”), and Tabula Rasa Partners, LLC (“Respondent”) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (“CAFO”).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties is brought by EPA pursuant to sections 113(a)(3) and 113(d)(1)(B) of the Clean Air Act, as amended (“Act” or “CAA”), 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B).

2. This proceeding is simultaneously commenced and concluded through the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b)(2) and (3), and 22.34.

3. For purposes of this proceeding, Respondent admits the jurisdictional and factual allegations contained herein; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order set forth herein, and waives all defenses, which have been raised or could have been raised to the claims set forth in this CAFO.

5. Compliance with all the terms and conditions of this CAFO shall only resolve Respondent's liability for federal civil monetary penalties for those violations and facts alleged in this CAFO.

6. Respondent consents to the issuance of this CAFO and to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

II. ALLEGATIONS

7. Respondent is a limited liability company authorized to do business in the State of Texas.

8. Respondent owns and operates several wells and associated equipment throughout the Permian Basin of West Texas, including East Seminole SA Unit #56W (American Petroleum Institute Number 42-165-34030) located in Seminole, East (San Andres) Field, Gaines County, Texas ("Facility").

9. At its Facility, Respondent conducts enhanced oil recovery through carbon dioxide ("CO₂") injection.

10. Injected CO₂ mixes with residual oil in a field, which re-pressurizes the field, making enhanced recovery possible. Injected CO₂ is recycled for reuse, but during injection, the CO₂ mixes in the subsurface with hydrogen sulfide ("H₂S").

11. H₂S is an extremely hazardous substance and is identified at 40 C.F.R. Part 68.130 as a toxic regulated substance with a threshold quantity of 10,000 pounds. The National Institute for Occupational Safety and Health has identified the Immediately Dangerous to Life or Health concentration of H₂S at 100 parts per million ("ppm").

12. On Monday, December 7, 2015, Respondent's employees recognized that the Facility had pressure on the surface casing, potentially indicating the presence of a leak.

13. Upon recognition of the pressure on the surface casing, Respondent unsuccessfully attempted to set a plug in the tubing using a workover rig. Work was suspended due to darkness, and Respondent elected to leave the wellhead slightly open to limit the increasing pressure on an apparent down-hole leak. A crew was on-site monitoring the well at all times.

14. Respondent attempted to contain leaking CO₂ in an onsite tank, but the only immediately available tank was quickly filled to capacity in excess of its pressure rating, and began to bulge.

15. At 5:00 am on Tuesday, December 8, 2015, Respondent's contract crew defied management instructions by shutting in the well. At 5:30 am, the increase in down-hole pressure caused casing welds to fail, resulting in an uncontrolled release of CO₂ containing H₂S.

16. Respondent reported that the release continued from December 8 to December 14, 2015, and consisted of approximately 2,500 metric tons of CO₂ containing approximately 300 ppm of H₂S.

17. The wellhead, tubing, casing and associated well equipment were damaged and multiple nearby homes were affected by the release. Nearby residents were evacuated for the duration of the incident.

18. The hazards associated with CO₂ injection and the release of hazardous substances during these types of enhanced oil recovery projects are well established.

19. Pursuant to section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), an owner/operator of a stationary source producing, processing, handling or storing substances listed pursuant to section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, has a general duty to: (1) identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques; (2)

design and maintain a safe facility, taking such steps as are necessary to prevent releases; and (3) minimize the consequences of accidental releases that do occur.

20. Respondent is a “person” as that term is defined by section 302(e) of the CAA, 42 U.S.C. § 7602(e).

21. The Facility is a “stationary source” as that term is defined by section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

22. Respondent is the “owner or operator” as those terms are defined by section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), of a stationary source.

23. At the Facility, Respondent produces, processes, handles, or stores substances listed in, or pursuant to, CAA § 112(r)(3) or other extremely hazardous substances identified as such due to toxicity, reactivity, flammability, volatility, or corrosivity.

24. The release of H₂S at the Facility on December 8, 2015, constituted an “accidental release” as that term is defined by section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A).

25. Respondent failed to maintain a safe facility and did not take such necessary steps to prevent an accidental release by not implementing adequate CO₂ injection well and enhanced oil recovery shutdown procedures on December 8, 2015.

26. Respondent’s failure constituted a violation of the general duty clause in section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

27. Respondent is therefore subject to the assessment of penalties pursuant to sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), for at least one day of violation of the general duty clause of section 112(r)(1) of the CAA, 42 U.S.C. §7412(r)(1).

III. TERMS OF SETTLEMENT

A. CIVIL PENALTY

28. As adjusted by the 2016 Civil Monetary Penalty Inflation Adjustment Rule (81 Fed. Reg. 43091), 40 C.F.R. § 19.4, the Administrator may assess a civil penalty of up to \$44,539 per day of violation for a violation occurring after November 2, 2015.¹

29. Pursuant to the authority granted in sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), and taking into consideration the size of the Respondent's business, the economic impact of the penalty on the Respondent's business, the Respondent's full compliance history and good faith efforts to comply, the duration of the violation, payment by Respondent of penalties previously assessed for the same violation (if any), the economic benefit of noncompliance, and the seriousness of the violation, as well as other factors which justice may require, EPA and Respondent agree that an appropriate penalty to settle this matter is \$44,500.

30. Respondent shall pay the assessed penalty within thirty (30) days of the effective date of this CAFO. Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA – Region 6." Payment shall be remitted in one of three ways: regular U.S. Postal mail (including certified mail), or U.S. Postal Service express mail - the check should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service), the check should be remitted to:

U.S. Bank

¹ On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990, to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect.

Government Lockbox 979077
U.S. EPA, Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket number CAA-06-2017-3309 shall be clearly typed on the check to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and the docket number of this CAFO. If payment is made by wire service, the wire transfer instructions shall reference the Respondent's name and address, the case name, and the docket number of this CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter or wire transfer instructions to the following:

Samuel Tates
Chief, Chemical Accident Enforcement Section (6EN-AS)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent's adherence to these instructions will ensure that proper credit is given when penalties are received in the Region.

31. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

32. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

33. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. PARTIES BOUND

34. The provisions of this CAFO shall apply to and be binding upon the parties to this

action, their officers, directors, agents, employees, successors, and assigns.

35. Respondent represents that the undersigned representative is fully authorized to enter into the terms and conditions of this CAFO, to execute this CAFO, and to legally bind the Respondent to the terms and conditions of this CAFO.

C. RETENTION OF ENFORCEMENT RIGHTS

36. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.

37. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

38. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants at or from the Facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

39. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Facility, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Complainant or the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to the claims that have been specifically resolved pursuant to

this CAFO.

D. COSTS

40. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

E. EFFECTIVE DATE

41. This CAFO becomes effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

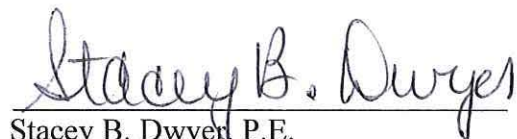
11/28/16
Date



Tabula Rasa Partners, LLC

FOR THE COMPLAINANT:

11/30/2016
Date



Stacey B. Dwyer, P.E.
Acting Director
Compliance Assurance and
Enforcement Division
U.S. EPA Region 6

FINAL ORDER

Pursuant to section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified.


This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

This Final Order shall resolve only those causes of action alleged in this CAFO. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors,

or assigns) obligation to comply with all applicable federal state, and local statutes and regulations, including the regulations that were the subject of this action.

The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 12-6-14



Renea Ryland
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that the original and a copy of the foregoing Consent Agreement and Final Order (CAFO) was hand-delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was placed in the United States Mail, to the following by the method indicated:

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7014 0150 0000 24545286

Mr. Ronald T. Evans
Chief Executive Officer
Tabula Rasa Partners, LLC
12012 Wickchester Lane
Suite 660
Houston, Texas 77079

Date: 12/06/2016

Keri Jackson
U.S. EPA, Region 6
Dallas, Texas