

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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Docket No.: RCRA-08-2009-0002

FILED
EPA REGION VIII
HEARING CLERK

In The Matter Of:)
Frontier Refining, Inc.) **COMPLAINT, COMPLIANCE ORDER**
2700 East 5th Street) **AND NOTICE OF OPPORTUNITY**
Cheyenne, Wyoming) **FOR HEARING**
82007)
)
)
RCRA ID No.: WYD051843613)
)

Respondent.)

COMPLAINT

This civil administrative action is authorized by section 3008 of the Solid Waste Disposal Act, as amended by and hereafter referred to as the Resource Conservation and Recovery Act or RCRA, 42 U.S.C. § 6928. RCRA § 3008 authorizes the Administrator of the United States Environmental Protection Agency (EPA) to issue complaints and compliance orders whenever she determines that any person has violated or is in violation of any requirement of subtitle C of RCRA, 42 U.S.C. §§ 6921-6939d. Complainant in this action is the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, who has been delegated the authority to issue complaints and compliance orders under RCRA § 3008. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22.

GENERAL ALLEGATIONS

The following paragraphs apply to and are hereby incorporated by this reference into each of the counts of the complaint:

Nature of Action

1. Complainant brings this action under RCRA, as amended, 42 U.S.C. §§ 6901 *et seq.*, to obtain compliance and civil penalties from Frontier Refining, Inc. (Respondent) for violations of RCRA and its implementing regulations, including the State of Wyoming's federally authorized hazardous waste program with regard to the illegal management of F037 hazardous waste diverted to surface impoundment 2.¹

Jurisdiction

2. EPA has jurisdiction of this matter under section 3008 of RCRA, 42 U.S.C. § 6928.

3. EPA retains full authority to implement the federal hazardous waste program, including the right to conduct inspections under section 3007 of RCRA, 42 U.S.C. § 6927, and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA, 42 U.S.C. §§ 6928, 6834, and 6973.

4. Pursuant to section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA has given notice of this action to the State.

Statutory and Regulatory Framework

5. RCRA was enacted on October 21, 1976, and amended thereafter by, *inter alia* the Hazardous and Solid Waste Amendments of 1984. RCRA establishes a comprehensive program

¹ On Exhibit A, surface impoundment 2 is referred to as, SWB, Pond 2, or storm water basin 101.

for regulating the generation, transportation, treatment, storage, and disposal of hazardous waste. 42 U.S.C. §§ 6901, *et seq.* Pursuant to its authority under RCRA, EPA has promulgated regulations at 40 C.F.R. parts 260 through 272, which generally prohibit the treatment, storage, or disposal of hazardous waste without a permit or equivalent “interim status.”

6. Pursuant to section 3006(b) of RCRA, 42 U.S.C. § 6926(b), EPA authorized the State of Wyoming (the State or Wyoming Department of Environmental Quality or WDEQ) to operate a hazardous waste program in lieu of the federal program. Such authorization was effective on October 18, 1995. All references in this complaint and compliance order to State regulations are those State regulations authorized by EPA under section 3006(b) of RCRA through the year 2001. See, 60 Fed. Reg. 38537 (July 27, 1995), 60 Fed. Reg. 51925 (October 4, 1995), 64 Fed. Reg. 09278 (February 25, 1999); 64 Fed. Reg. 19925 (April 23, 1999) and 66 Fed. Reg. 40911 (August 6, 2001).

7. RCRA section 3005(j)(1), 42 U.S.C. § 6925(j)(1), states that, except for specific cases where an exemption has been met or a variance has been granted, a surface impoundment shall not receive, store, or treat hazardous waste after November 8, 1988, unless it is in compliance with RCRA section 3004(o)(1)(A), 42 U.S.C. § 6924(o)(1)(A), which sets forth the minimum technology standards for new surface impoundments, and qualifies for interim status under RCRA section 3005(e), 42 U.S.C. § 6925(e).

8. Section 3005(j)(6) of RCRA, 42 U.S.C. § 6925(j)(6), specifies that, if a surface impoundment becomes subject to regulation as a result of the listing of a new hazardous waste

under section 3001 of RCRA, 42 U.S.C. § 6921, after November 8, 1988, the four-year period of compliance extends from the date of the promulgation of the newly listed waste².

9. Pursuant to section 3001 of RCRA, 42 U.S.C. § 6921, EPA promulgated two refinery wastewater treatment sludge listings,³ F037 and F038, on November 2, 1990.⁴

Allegations

10. Respondent is a corporation organized under the laws of Delaware and authorized to do business in Wyoming.

11. Respondent is a "person" as defined in section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and Wyoming's Hazardous Waste Management Rules and Regulations (Wyoming HWRR⁵) Chapter 1, Section (f), (40 C.F.R. § 260.10), and thus, is subject to regulation under RCRA.

12. Respondent is and was at all times relevant to this complaint, a generator (commonly referred to as a large quantity hazardous waste generator that generates greater than 1,000 kilograms of hazardous waste per month).

13. Respondent purchased a petroleum refining facility in 1988, located at 2700 East 5th Street, Cheyenne, Wyoming (facility). The facility has a crude oil capacity of 52,000 barrels

² November 2, 1994.

³ See, 55 Fed. Reg. 46354 (November 2, 1990).

⁴ Id. (See also, 55 Fed. Reg. 51707 - RCRA Cluster I, HSWA where the equivalent Wyoming regulation for F037 and F038 became the federal requirements in Wyoming.)

⁵ Section 35-11-503 of the Wyoming Environmental Quality Act gives the State of Wyoming the authority to promulgate rules and regulations for solid waste management facilities and for the management of hazardous wastes.

(bbls) per day and is rated by the North American Industry Classification System (NAICS) and assigned a code of 324110.

14. The refinery is divided into two main processing areas: Plant 1 and Plant 2. Plant 1 contains the delayed coking unit, the storage tank farm, and truck loading dock. Process units in Plant 2 include: a crude oil processing unit, a fluidized catalytic cracker unit (FCCU), a gas concentration unit, a hydrofluoric acid alkylation unit, a butamer unit, a distillate hydrotreater, a naphtha hydrotreater, a scanfiner, a platformer, an amine unit, a sulfur recovery unit, a sour water stripper, a hydrogen plant, and a wastewater treatment plant (WWTP).

15. Respondent's WWTP receives process wastewater and storm water from virtually every plant and unit at the facility. Some sources of water to the WWTP include: oily water from the desalter unit that can bypass the oil recovery tank (TK 41) when maintenance is being performed; wastewater from TK 41, coker API separator water; and water from storm water basin 101 (otherwise referred to as surface impoundment 2).

16. Surface impoundment 2 was constructed in 1989 and collects diversions from the API oil/water separator at the Respondent's WWTP. These diversions occur when the Respondent's WWTP is not capable of treating the volume of flow coming into the WWTP.

17. The surface impoundment 2 liner consists of 2 feet of clay covered by a high density polyethylene (HDPE) liner. The approximate dimensions of surface impoundment 2 are 190 ft. x 180 ft. x 10 ft. The depth to groundwater from the bottom of the impoundment is approximately 5 ft.

18. As more fully set forth in Count 54, surface impoundment 2 does not meet minimum technical requirements of RCRA section 3004(o)(1)(A) and/or Wyoming HWRR, Chapters 5 and 10 and Chapter 11, Section 1 and Section 12.

19. All process wastewater is a “solid waste” as defined in RCRA section 1004(27), 42 U.S.C. § 6903(27), and Wyoming HWRR, Chapter 1, Section (f), and is diverted to surface impoundment 2 from the headworks of the API separator.

20. Diversions of process wastewater from the API oil/water separator to surface impoundment 2 have occurred numerous times during dry weather flow.

21. Wyoming HWRR, Chapter 2, Section 4(b) defines F037 hazardous waste as “[p]etroleum refinery primary oil/water/solids separation sludge-Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in oil/water/solids separators; tanks **and impoundments ... and stormwater units receiving dry weather flow....**” (Emphasis added.)

22. Sludges in, or from, waste water diverted to surface impoundment 2 during dry weather are a “hazardous waste”⁶ as defined at section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and listed hazardous waste code F037. (Wyoming HWRR, Chapter 1, Section (f), Chapter 2, Section 1(c) and 40 C.F.R. § 261.3.)

23. The F037 hazardous waste listing is assigned to sludges resulting from the first stage of primary treatment where gravitational oil/water/solids separation is performed.

⁶ A “hazardous waste” is a subset of a “solid waste.”

24. Any person whose act or process produces hazardous waste identified or listed in Chapter 2 of the Wyoming HWRR (40 C.F.R. part 261), or whose act first causes a hazardous waste to be subject to regulation, is subject to regulation as a generator of hazardous waste under Wyoming HWRR, Chapter 1(f). (40 C.F.R. § 260.10.)
25. Respondent, to date, has not filed a notification of hazardous waste activity pursuant to RCRA section 3010, 42 U.S.C. §6930 or a Part A permit application under section 3005(e) of RCRA, 42 U.S.C. § 6925(e), by November 2, 1992, for management of the F037 hazardous waste in surface impoundment 2.
26. Respondent, the owner and operator of surface impoundment 2 failed to qualify surface impoundment 2 for operation pursuant to interim status.
27. Respondent has been prohibited from receiving, storing or treating hazardous waste in surface impoundment 2 since November 3, 1994. (RCRA sections 3005(j)(1) and (6), 42 U.S.C. § 6925(j)(1) and (6).)
28. On or about March 2, 2009, through March 5, 2009, inspectors from EPA's National Enforcement Investigations Center (NEIC) conducted an on-site inspection of Respondent's facility. The inspection included representatives from NEIC, EPA Region 8, EPA headquarters, and, for a portion of that time, Wyoming Department of Environmental Quality (WDEQ); hereinafter, collectively referred to as the Inspectors.
29. Linda Jacobson, the EPA Region 8 inspector, presented her credentials to the facility's representative, Mr. David Danforth, Frontier Environmental Manager, and access to the facility was granted.

30. The inspection focused on (1) identifying solid wastes generated on-site and the subsequent management and handling of that waste; and (2) compliance with RCRA at the on-site surface impoundments. Other areas of RCRA compliance were not evaluated during this inspection.

31. During the inspection, the inspectors reviewed facility documents and records, conducted interviews with facility personnel, and participated in a physical inspection of the surface impoundment areas, including surface impoundment 2.

32. As follow-up to the inspection, the Respondent provided Linda Tekrony, NEIC, with a copy of the Daily Processing Unit Turnover Reports from May 3, 2006, through March 11, 2009.

33. Those reports document at least fifty occasions in which Respondent diverted flow from the API oil/water separator to surface impoundment 2 during dry weather events.

34. Fifty of these separate diversion occasions are listed in Exhibit A to this Complaint.

35. In a letter from Respondent to the NEIC Inspector dated September 15, 2009,

Respondent admits the following:

- a. Surface impoundment 2 was last cleaned in 2000;
- b. The sludge cleaned out of surface impoundment 2 in the year 2000, was shipped off-site as a listed hazardous waste (F037);
- c. No samples were taken of the sludge shipped in the year 2000 because the sludge was determined by Respondent based on knowledge of process to be a listed hazardous waste due to dry weather flow of untreated process water; and
- d. No specific hazardous constituent or other analyses are done on any water diverted to surface impoundment 2.

36. Respondent has received, stored, and treated hazardous waste in surface impoundment 2, without qualifying for interim status or obtaining a permit or a variance from the State of

Wyoming, or meeting any statutory or regulatory exemptions.

37. Wyoming HWRR, Chapter 11, Section 1(i) sets forth minimum standards that define acceptable management of hazardous waste during the period of interim status and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled. (40 C.F.R. § 265.1(a).)

38. Wyoming HWRR, Chapter 11, Section 1(ii) extends the interim status standards to hazardous waste management facilities which have failed to provide timely notification as required by Chapter 1, Section 1(h) and W.S. 35-11-503(d) and/or failed to file a Part A of the permit application as required by Chapter 3, Section 2(a)(v) and (vii). (40 C.F.R. § 265.1(b).)

COUNTS 1-50

Receipt and Management of Hazardous Waste into a Surface Impoundment that Fails to meet Minimum Technology Standards and Fails to Qualify for Interim Status

39. RCRA section 3005(j)(1), 42 U.S.C. § 6925(j)(1), states that except for specific cases where an exemption has been met or a variance has been granted, a surface impoundment shall not receive hazardous waste after November 8, 1988, unless it is in compliance with RCRA section 3004(o)(1)(A), which sets forth the minimum technology standards for new surface impoundments, and qualifies for interim status under RCRA section 3005(e), 42 U.S.C. § 6925(e).

40. Section 3005(j)(6) of RCRA, 42 U.S.C. § 6925(j)(6), specifies that if a surface impoundment becomes subject to regulation as a result of the listing of a new hazardous waste under section 3001 of RCRA, 42 U.S.C. § 6921, after November 8, 1988, the four-year period of compliance extends from the date of the promulgation of the newly listed waste.

41. Respondent failed to achieve interim status for the receipt and management of F037 in surface impoundment 2.

42. Surface impoundment 2 does not meet the minimum technical standards set forth in section 3004(o)(12)(A).

43. From December 2006 through March 2009, Respondent diverted dry weather flow of untreated process waste water to surface impoundment 2 on at least fifty separate occasions, as detailed on Exhibit A to this Complaint.

44. Respondent's receipt of F037 hazardous waste, on at least fifty distinct occasions into surface impoundment 2, constitutes fifty separate violations of RCRA sections 3005(j)(1) and (6), 42 U.S.C. §§ 6925(j)(1) and (6).

COUNT 51

Storage of Hazardous Waste in an Unauthorized Hazardous Waste Management Unit

45. Respondent's surface impoundment 2 has been prohibited from storing hazardous waste in surface impoundment 2 since November 2, 1994 (RCRA sections 3005(j)(1) and (6), 42 U.S.C. § 6925(j)(1) and (6)).

46. Respondent's storage of F037 hazardous waste in surface impoundment 2 from December 26, 2006 through the present, constitutes a violation of RCRA sections 3005(j)(1) and (6), 42 U.S.C. §§ 6925(j)(1) and (6).

COUNTS 52 and 53

Failure to Determine Necessity of Air Emissions Controls

47. 40 C.F.R. § 265.231⁷ requires the owner or operator to manage hazardous waste placed in

⁷ EPA has direct implementation responsibility for the Subpart CC requirements in Wyoming.

a surface impoundment in accordance with the applicable requirements of subpart CC, 40 C.F.R. §§ 265.1080 through 265.1090, which refers to air emission standards for tanks, surface impoundments, and containers.

48. The terms, “average volatile organic concentration” or “average VO concentration” and “point of waste origination” are defined at 40 C.F.R. § 265.1081.

49. 40 C.F.R. § 265.1083(c)(1) requires owners or operators that manage hazardous waste in surface impoundments to determine the average VO concentration at the point of waste origination using the procedures in 40 C.F.R. § 265.1084 to make that determination.

50. 40 C.F.R. § 265.1083(c)(1) requires the owner or operator to make the determination in the preceding paragraph, at least once every twelve months following the date of initial determination for the hazardous waste streams entering surface impoundment 2.

51. Respondent failed to make the initial VO concentration determination and thus, the subsequent annual determination during the December 2006 to March 2009 time frame.

52. Respondent’s failure to manage the F037 hazardous waste in accordance with the applicable requirements of Subpart CC constitutes two separate violations of 40 C.F.R. § 265.231.

COUNT 54
Failure to Construct Surface Impoundment
in accordance with Design and Operating Requirements

53. Wyoming HWRR, Chapter 11, Section 12(b) (40 C.F.R. § 265.221) requires owners and operators using surface impoundments to manage hazardous wastes to meet minimum technology requirements for the design and operation of such surface impoundments.

54. Wyoming HWRR, Chapter 11, Section 12(b)(viii) (40 C.F.R. § 265.221(h)) requires surface impoundments that are newly subject to W.S. 35-11-503(d) and RCRA § 3005(j)(1) due to

a new listing of hazardous waste to be in compliance with Section 12(b)(i),(iii), and (iv) not later than two years after promulgation of the additional new listing of hazardous waste or to close the surface impoundment.

55. Respondent has operated surface impoundment 2 since Respondent constructed it in 1989, has operated it for the management of hazardous waste since some time prior to the year 2000, and continues to operate it for hazardous waste management as of the date of this Complaint.

56. Wyoming HWRR, Chapter 11, Section 12(b)(i),(iii), and (iv) require two or more liners and a leachate collection and removal system between the liners at surface impoundments managing F037 wastes, unless the existing unit was constructed in compliance with Chapter 10 and there is no reason to believe that the original liner is not functioning as designed.

57. Chapter 10, Section 10(b)(iii)(A)(I)(2) requires the composite bottom liner to be constructed of at least 3 feet (91 cm) of compacted soil material with a hydraulic conductivity of no more than 1×10^{-7} cm/sec.

58. According to Respondent's certified response to a 1991 EPA Information Request issued pursuant to section 3007 of RCRA, 42 U.S.C. § 3007, surface impoundment 2 was built in 1989 and has only one liner consisting of a 2 foot clay covered by a HDPE.

59. Respondent's surface impoundment 2 was not constructed in compliance with Wyoming HWRR, Chapter 10, Section 10(b)(iii)(A)(I)(2).

60. In addition to Respondent's failure to construct the liner in accordance with Chapter 10 of the Wyoming HWRR, there is no reason to believe that the original liner is functioning as designed for many reasons, including but not limited to the following:

- a. it was not designed to handle F037 listed hazardous waste;
- b. the depth to groundwater underneath the liner is approximately 5 feet;

- c. Respondent has not performed periodic inspections and/or maintenance of the liner; and
- d. sludge was removed from the surface impoundment approximately 10 years ago potentially impacting the condition of the liner.

61. Failure of Respondent to construct surface impoundment 2 in accordance with minimum technology requirements design and operating requirements constitutes a violation of Wyoming HWRR, Chapter 11, Section 12(b) (40 C.F.R. § 265.221).

COUNT 55

Failure to Conduct Monitoring and Inspections at Surface Impoundment 2

62. Wyoming HWRR Chapter 11, Section 12(h)(i) (40 C.F.R. § 265.226) requires owners and operators of facilities that use surface impoundments to treat, store, or dispose of hazardous waste to inspect: (A) the freeboard level at least once each operating day to ensure compliance with Section 12(c), and (B) the surface impoundment, including dikes and vegetation surrounding the dike, at least once a week to detect any leaks, deterioration, or failures in the impoundment.

63. Wyoming HWRR Chapter 11, Section 12(h)(ii) (40 C.F.R. § 265.226) requires owners and operators that are required to have a leak detection system under Section 12(h)(i) to meet the requirements of Section 12(h)(ii)(A),(B), and (C).

64. Wyoming HWRR, Chapter 11, Section 4(f)(i) (40 C.F.R. § 265.15(a)), requires owners and operators to inspect for malfunctions, deterioration, operator errors, and discharges which may be causing or may lead to a release of hazardous waste constituents to the environment or a threat to human health.

65. Wyoming HWRR, Chapter 11, Section 4(f)(ii)(A) and (B) (40 C.F.R. § 265.15(b)(1)), requires owners and operators to develop a written inspection schedule, to be kept at the facility, for inspecting all monitoring equipment; safety and emergency equipment; security devices; and

operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

66. Wyoming HWRR, Chapter 11, Section 4(f)(ii)(c) (40 C.F.R. § 265.15(b)(3)), requires owners and operators to identify types of problems which are to be examined during the inspection.

67. Wyoming HWRR, Chapter 11, Section 4(f)(ii)(D) (40 C.F.R. § 265.15(b)(4)), acknowledges that the frequency of inspections may vary for the items on the schedule, but should be based upon the rate of deterioration of the equipment and the probability of environmental or human health incident if the malfunction, deterioration, or any operator error goes undetected between inspections. Areas subject to spills must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies in section 12(h) of this Chapter, where applicable.

68. Wyoming HWRR, Chapter 11, Section 4(f)(iii) (40 C.F.R. § 265.15(c)) requires the owner or operator to remedy any deterioration or malfunction of equipment, or structures which the schedule reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard.

69. Wyoming HWRR, Chapter 11, Section 4(f)(iv) (40 C.F.R. § 265.15(d)) requires the owner or operator to record inspections in an inspection log or summary that is to be kept for three years from the date of inspection.

70. In a letter to the NEIC inspector, dated September 15, 2009, Respondent stated that it checks for freeboard once a day; dikes and vegetation surrounding the dike, at least once a week to detect leaks deterioration, or failures; and that its personnel routinely observe the available capacity and condition of surface impoundment 2, noting and reporting any problems encountered.

71. During the inspection, Respondent was requested to provide copies of its inspection and monitoring records for surface impoundment 2.

72. Respondent admitted that it did not have any written inspection and/or monitoring records for surface impoundment 2.

73. The Respondent's failure to adequately monitor and inspect surface impoundment 2 and record such monitoring and inspections constitutes an ongoing violation of Wyoming HWRR Chapter 11, Section 12(h)(i) (40 C.F.R. § 265.226) Wyoming HWRR Chapter 11, Section 4(f) (40 C.F.R. § 265.15).

COUNTS 56 and 57
Failure to Develop Closure and Post-Closure Plans
for Surface Impoundment 2

74. Wyoming HWRR Chapter 11, Section 9 (40 C.F.R. § 265 subpart G) regulates the closure and post-closure activities of hazardous waste management facilities.

75. Wyoming HWRR Chapter 11, Section 12(j) (40 C.F.R. § 265.228) sets forth the closure and post-closure requirements for surface impoundments.

76. Wyoming HWRR, Chapter 11, Section 9(c) requires Respondent to have had a written closure plan, by May 2, 1992.⁸ (40 C.F.R. § 265.112.)

77. Wyoming HWRR Chapter 11, Section 9(i) requires Respondent to have had a written post-closure plan by May 2, 1992. (40 C.F.R. § 265.118.)

78. Respondent failed to prepare a closure plan and a post closure plan on or before May 2, 1992, for surface impoundment 2.

⁸This date represents two years from the date the F037 hazardous waste listing was first promulgated. This state requirement became a requirement of federal law in October 1995. Prior to October 1995, the federal requirement in Wyoming was found at 40 C.F.R. § 265.112.

79. Respondent's failure to develop a closure plan and a post-closure plan for surface impoundment 2, constitutes two violations of Wyoming HWRR, Chapter 11, Section 9 (40 C.F.R. 265 subpart G).

COUNT 58

Failure to Perform Cost Estimate for Closure of Surface Impoundment 2

80. Wyoming HWRR Chapter 5, Section 1(c) (40 C.F.R. §§ 265.142(a) and 265.144(a)) requires the owner or operator to have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in Chapter 11, Section 9(b) through (f) (40 C.F.R. §§ 265.111 through 265.115) and Chapter 11, Section 12(j) (40 C.F.R. § 265.228).

81. The owner or operator of an interim status hazardous waste management unit must have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in Chapter 11, Sections 9(h) through (k) and 12(j) (40 C.F.R. §§ 265.117 through 265.120 and 40 C.F.R. 265.228).

82. Upon Complainant's information and belief, Respondent, has not performed a cost estimate for closure of surface impoundment 2 in accordance with the rules and regulations.

83. Respondent's failure to perform a cost estimate for closure of surface impoundment 2 constitutes a continuing violation of Wyoming HWRR Chapter 5, Section 1(c) (40 C.F.R. §§ 265.142(a) and 265.144(a)) and Chapter 11, Sections 9(b) through (f) (40 C.F.R. §§ 265.111 through 265.115), Sections 9(h) through (k) (40 C.F.R. §§ 265.117 through 265.120) and Section 12(j) (40 C.F.R. § 265.228).

COUNT 59
**Failure to establish Financial Assurance for Closure and Post-Closure
of Surface Impoundment 2**

84. Wyoming HWRR Chapter 5, Section 1(d) (40 C.F.R. §§ 265.143 and 265.145) requires an owner or operator to establish financial assurance for the closure of the facility, and, if that facility is or shall, by virtue of closure with waste in place, become a disposal facility, the facility must establish financial assurance for the post-closure of the disposal units.

85. Respondent's failure to establish financial assurance for the closure and post-closure of surface impoundment 2 constitutes a violation of Wyoming HWRR Chapter 5, Section 1(d) (40 C.F.R. §§ 265.143 and 265.145).

PROPOSED CIVIL PENALTY

Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), authorizes the assessment of a civil penalty of up to \$37,500 per day per violation. Based upon the facts alleged in this complaint and taking into account the factors prescribed by statute (i.e., the seriousness of the violations and any good faith efforts by respondent to comply with the applicable requirements) Complainant proposes to assess a civil penalty of **\$6,749,075.00** for the violations alleged in the complaint, as follows:

Counts 1-50	Receipt and Management of Hazardous Waste into a Surface Impoundment that Fails to meet Minimum Technology Standards and Fails to Qualify for Interim Status	\$4,590,057
Count 51	Storage of Hazardous Waste in an Unauthorized Hazardous Waste Management Unit	\$ 793,866
Counts 52-53	Failure to Determine Necessity of Air Emissions Controls	\$ 58,290

Count 54	Failure to Construct Surface Impoundment in Accordance with Design and Operating Requirements	\$ 578,772
Count 55	Failure to Conduct and Record Monitoring and Inspections at Surface Impoundment 2	\$ 342,524
Counts 56-57	Failure to Develop Closure and Post-Closure Plans for Surface Impoundment 2	\$ 80,194
Count 58	Failure to Perform Cost Estimate for Closure of Surface Impoundment 2	\$ 58,290
Count 59	Failure to Establish Financial Assurance for Closure and Post-Closure of Surface Impoundment 2	<u>\$ 247,082</u>
Total Penalty		\$6,749,075

The penalty proposed above was calculated in accordance EPA's RCRA Civil Penalty Policy (June 2003, as amended), which EPA uses to provide a reasonable application of the statutory factors.

COMPLIANCE ORDER

Based upon the allegations of the complaint, and pursuant to section 3008(a) of RCRA, 42 U.S.C.

§ 6928(a), and 40 C.F.R. § 22.37, it is hereby ORDERED:

86. Respondent shall immediately halt the addition of any new wastes or waste waters to surface impoundment 2.

87. Pending closure of surface impoundment 2 as required by the approved Closure Plan as defined below, Respondent shall amend the existing Contingency Plan to include surface

impoundment 2. The amended plan shall be submitted to EPA within 30 days of the effective date of this order. Wyoming HWRR, Chapter 11, Section 6(e). (40 C.F.R. § 265.54)

88. Pending closure of surface impoundment 2 as required by the approved Closure Plan as defined below, Respondent shall determine the applicability of and the need for an air emission control device by conducting sampling of the wastes in surface impoundment 2 pursuant to the procedures and requirements of 40 C.F.R. §§ 265.231 and 265.1084 and submit the results to EPA within 45 days of the effective date of this order. Pending results of the sampling, further measures to control air emissions from surface impoundment 2, pursuant to 40 CFR § 265.1086, may be warranted and shall be implemented as directed by EPA.

89. Respondent shall assess the adequacy of the existing groundwater monitoring network to determine releases from this unit in accordance with Wyoming HWRR, Chapter 11, Section 8(b) (40 C.F.R. § 265.91) and submit the results of this assessment along with a Groundwater Sampling and Analysis Plan, developed pursuant to the requirements of Wyoming HWRR, Chapter 11, Section 8(c) (40 C.F.R. § 265.92), and a groundwater quality assessment program developed pursuant to Wyoming HWRR, Chapter 11, Section 8(d) (40 C.F.R. 265.93), to EPA within 60 days of the effective date of this order.

90. Within 60 days of the effective date of this order, Respondent shall develop and submit a closure plan for surface impoundment 2 which complies with the closure requirements of Wyoming HWRR Chapter 11, Section 9 (40 C.F.R. 265 subpart G) , and includes the requirements of Wyoming HWRR Chapter 11, Section 12(j) (40 C.F.R. § 265.228) specific to closure of a surface impoundment (Closure Plan).

91. Concurrent with submission of the Closure Plan, Respondent shall submit a cost estimate for closure of surface impoundment 2, consistent with the requirements of Wyoming HWRR Chapter 5, Section 1(c) (40 C.F.R. §§ 265.142(a) and 265.144(a)) and Chapter 11, Sections 9(b) through (f) and Section 12(j) (40 C.F.R. § 265.228).
92. Simultaneously with the submittal of the cost estimate, Respondent shall propose the option to be used to establish financial assurance for closure, pursuant to the requirements of Wyoming HWRR Chapter 5, Section 1 (40 C.F.R. §§ 265.143 and 265.145). Upon EPA's approval, Respondent shall establish financial assurance for the closure and post-closure care of surface impoundment 2.
93. Within 60 days of completion of closure of the hazardous waste surface impoundment and within 60 days of completion of final closure, Respondent shall submit a certification that the unit has been closed in accordance with the specifications in the approved Closure Plan. In compliance with Wyoming HWRR, Chapter 11, Section 9(f) (40 C.F.R. § 265.115). Respondent shall submit to the local zoning authority or the authority with jurisdiction over local land use a survey plat, indicating the location and dimensions of hazardous waste disposal units with respect to permanently surveyed benchmarks pursuant to Wyoming HWRR, Chapter 11, Section 9(g) (40 C.F.R. § 265.115).
94. Within 60 days of the effective date of this order, Respondent shall submit for EPA review and approval a post-closure care plan and post-closure care cost estimate for surface impoundment 2, pursuant to the requirements of Wyoming HWRR, Chapter 11, Section 9(i) (40 C.F.R. §§ 265.118) and Chapter 5, Section 1(c) (40 C.F.R. §§ 265.144).

95. Within 30 days of approval of the post-closure plan, cost estimate, and proposed option for establishing financial assurance, Respondent shall establish the financial instrument for post-closure care Wyoming HWRR, Chapter 5, Section 1(d) (40 C.F.R. §§ 265.145). Alternatively and consistent with Wyoming HWRR, Chapter 5, Section 1(g) (40 CFR 265.146), Respondent may satisfy the requirements for financial assurance for both closure and post-closure care by using one mechanism that meets the specifications in Section 1(d) of Chapter 5.

POTENTIAL LIABILITY FOR ADDITIONAL PENALTIES

Pursuant to section 3008(c) of RCRA, 42 U.S.C. § 6928(c), a respondent who fails to achieve compliance within the time specified in a compliance order is liable for an additional civil penalty of up to \$37,500 for each day of continued noncompliance. Such continued noncompliance may also result in suspension or revocation of any RCRA permits issued by EPA.

OPPORTUNITY TO REQUEST A HEARING

As provided in section 3008(b) of RCRA, 42 U.S.C. § 6928(b), you have the right to request a public hearing within 30 days of service of this complaint. If you wish to (1) contest any material fact upon which the complaint is based; (2) contend that the amount of the penalty, revocation or suspension proposed is inappropriate; or (3) contend that you are entitled to judgment as a matter of law, you must file a written answer in accordance with 40 C.F.R. §§ 22.15 and 22.37 within 30 days of the filing of this complaint.

Your answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained the complaint; (2) briefly state the circumstances or arguments which are alleged to constitute grounds of defense; (3) state the facts intended to be placed at issue, and (4) specifically request an administrative hearing, if desired. 40 C.F.R. § 22.15(b). The denial of any

material fact or the raising of any affirmative defense in your answer shall be construed as a request for a hearing. Failure to deny any of the factual allegations in this complaint will constitute an admission of the undenied allegations.

The original of the answer and all other documents served in this proceeding must be filed with the Regional Hearing Clerk, U.S. EPA Region 8, (8RC), 1595 Wynkoop St, Denver, Colorado 80202-1129. A copy of the answer and all other documents filed in this action must be served on the attorney listed below.

IF YOU FAIL TO REQUEST A HEARING, YOU WILL WAIVE YOUR RIGHT TO CONTEST FORMALLY ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF YOU FAIL TO FILE A WRITTEN ANSWER WITHIN THE THIRTY (30) DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R. § 22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.

SETTLEMENT CONFERENCE

EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in 40 C.F.R. Part 22. If a settlement can be reached, its terms shall be expressed in a written consent agreement, signed by the parties and incorporated into a final consent order by the Regional Judicial Officer.

A request for a settlement conference, or any questions that you may have regarding this complaint and compliance order, should be directed to the undersigned attorney.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Office of Enforcement, Compliance
and Environmental Justice, Complainant.**

Date: 30 September 2009

Sharon L Kercher

Eddie A. Sierra,
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Date: 9-30-09

Brenda Morris

Brenda Morris, Enforcement Attorney
U.S. EPA, Region 8

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT, COMPLIANCE ORDER, AND NOTICE OF OPPORTUNITY FOR HEARING was hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop St., Denver, Colorado, and that a true copy of the same was sent via certified mail to:

CT CORPORATION
1720 Carey Ave.
Cheyenne, WY 82001

9/30/09
Date

Judith M. McTernan
Judith McTernan

EXHIBIT A to In the Matter of: Frontier Refining, Inc.

Date	Beginning Time	Ending Time	Statements taken from Turnover Unit Sheets
12-26-06	10 a.m.		Diverting some flow to SWB. Alky put fire hose on exchanger for cooling
05-12-07	6 p.m.	12 a.m.	Diverted some flow to SWB to maintain turbidity.
06-08-07	9:10 p.m.	11:10 p.m.	Started diverting flow to SWB. API lite brown & oily.
06-29-07	6:50 a.m.	-----	Cleansing desalter. Diverting to storm water per orders. Switched desalter back to API.
07-01-07	12:30 a.m.	-----	Cokers sewers backing up. We might get hit with oil. Diverted some flow to SWB.
08-14-07	7:30 a.m.	-----	Tank 101 flow off for maintenance. Diverting all API flow to SWB - R.G.
11-29-07	6 a.m.	6 p.m.	Diverting API to SWB-line broke to tank 101.
12-15-07	6 p.m.	8 p.m.	Went to coker after call for all first responders to report coker fire. Diverted API to SWB.
12-26-07	10:15 a.m.	12 p.m.	Diverted to SWB for awhile until desalter drain is cleaned up.
12-28-07	4:30 p.m.	8 p.m.	High flow in API all day. Diverting to SWB per R.G.

EXHIBIT A to In the Matter of: Frontier Refining, Inc.

01-08-08	9 p.m.	-----	Diverting partial flow to SWB until I can get IAF turbidities in control.
01-21-08	7 a.m.	12:45 p.m.	Big leak on roadway near warehouse, flows up, diverting to SWB.
01-23-08	2:15 p.m.	3:30 p.m.	Diverted flow to SWB, shut down unit at 2:15 p.m. to 3:30 p.m.
02-03-08	7:30 a.m.	11:00 a.m.	Diverted API to SWB. High pH and flouride.
02-05-08	12:30 p.m.	-----	Tank 101 flow off for chemical pump change. Diverting API to SWB.
02-06-08	9:15 a.m.	11:00 a.m.	KOH hoppers overflowed, diverting to SWB.
02-18-08	6:50 p.m.	7:20 p.m.	Diverted API to SWB. API ammonia at 117.5.
03-05-08	5:30 a.m.	-----	Diverted partial flow to storm H2O to maintain level in tank 101 until repairs done on IAF.
03-06-08	6:40 a.m.	10:44 a.m.	Diverted effluent to storm H2O because fluorides high & visible oil.
03-11-08	10 a.m.	11:50 a.m.	Shut down unit tank 101, valve tripped. Diverted API to SWB.
03-15-08	6 a.m.	9 a.m.	API has a lot of gas oil. Diverted to SWB.

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05-06-08	5:45 a.m.	-----	API slimmy green diverted to SWB.
05-12-08	5:45 p.m.	7:15 p.m.	Desalter drain very dirty. Call crude, Diverted to SWB.
06-18-08	7:30 p.m.	9 p.m.	API oily diverted to storm H2O basin.
06-20-08	6 a.m.	8 a.m.	Diverted API to SWB for 2 hr. Getting hit with coker gas oil.
06-22-08	9:15 a.m.	-----	Crude mud washing desalter. API getting very dirty. Diverted to SWB for awhile.
07-19-08	7:15 a.m.	-----	Diverted plant to storm water because instruments were not responding-very high flows.
07-19-08	7:20 p.m.	8:15 p.m.	Level control not working properly on API. API high level diverted to storm H2O.
07-21-08	9 a.m.	-----	Rubber hose on API effluent split. Diverted to SWB until hose was replaced.
09-02-08	7:30 a.m.	9:30 a.m.	Diverted API to storm H2O so that forkner personnel can switch lines.
10-09-08	11:15 a.m.	-----	Diverting API to SWB. High pH and very dirty in API and have several holes in piping to tank 101.
10-16-08	10:30 p.m.	-----	API dark grey with black fines. Diverted flow to SWB.

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11-24-08	6:30 a.m.	-----	API very oily. Diverting all flow to SWB-shut down unit.
11-25-08	1 a.m.	-----	WWTP 2 nd sample NH3-167.5. API was diverted to storm water.
11-28-08	11:45 a.m.	1:15 p.m.	Lot of oil in API- diverting to SWB.
12-13-08	7:30 a.m.	1:45 p.m.	IAF turbidity went high (1500). Didn't help to make adjustments on valves. Shut off flow to IAF diverted to SWB.
12-14-08	12 p.m.	1 p.m.	API very green with gas oil from coker. Diverted to SWB.
12-24-08	11 a.m.	12:05 p.m.	Platformer called said we're dumping 20 to 30 gallons of amine to sewer. Decision was made to divert to storm H2O.
01-13-09	3 a.m.	4:20 a.m.	At 30.5 ft. manually and partially bypassed to storm water basin. Coker API is pumping for an unknown period of time, according to them.
01-15-09	1:30 p.m.	2:40 p.m.	Diverted plant effluent to ponds while blinds were being pulled.
01-17-09	11:50 a.m.	1:45 p.m.	IAF pH - 7.26, API pH 9.17, ammonia 91.5, Desalter ammonia-142.5. Diverted all flow to storm.

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01-21-09	6 p.m.	01/22/09 1:15 a.m.	IAF turbidity took off to 1500. Tried raising the IAF level and chem. Not working. Diverted flow to SWB.
01-25-09	11:45 a.m.	-----	Called Alky to shut off blowdown-high flows coming into API. Diverted some flow from API to SWB.
02-03-09	2:05 p.m.	-----	Coker called to inform us they will be sending 'Lots' of water. We are at 950 gpm. Partial diversion to storm water.
02-04-09	5:15 a.m.	7:30 a.m.	High pH at API-acid added-API partially diverted to storm water basin.
02-07-09	2:15 p.m.	5 p.m.	API still dirty, diverting to SWB.
02-09-09	2 p.m.	-----	Desalter dirty, diverting to SWB.
02-14-09	8:45 a.m.	-----	API turned a greenish yellow color. Diverted to SWB.
03-09-09	6:30 p.m.	7 p.m.	Diverted API to storm water basin. We are being hit with gas oil.
03-11-09	6 p.m.	6:35 p.m.	API has lots of gas oil in it. Diverting to SWB for awhile.