

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Docket No.: CWA-08-2014-0011

2014 JAN 27 PM 1:33

FILED
EPA REGION VIII
HEARING ROOM

IN THE MATTER OF)
)
Nadel and Gussman Rockies, LLC) **COMPLAINT AND**
) **SETTLEMENT AGREEMENT**
)
Respondent.)

Complainant, United States Environmental Protection Agency, Region 8 (EPA or Complainant), and Nadel and Gussman Rockies, LLC (Respondent or NG Rockies) by their undersigned representatives, hereby consent and agree as follows:

A. **PRELIMINARY MATTERS**

1. This Complaint and Settlement Agreement (CASA) is issued to Respondent for violating sections 311(b)(6)(A)(ii) and 311(j)(1)(C), 33 U.S.C. §§1321(b)(6)(A)(ii) and (j)(1)(C) of the Clean Water Act (CWA or the Act) and the implementing regulations at 40 CFR part 112.
2. The undersigned EPA, Region 8 officials have been properly delegated the authority to issue this CASA under the authority vested in the Administrator of EPA by section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. §1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990.
3. This section authorizes EPA to bring an action under section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. §1321(b)(6)(B)(ii), for civil administrative penalties against Respondent who has violated, or is in violation of, a requirement or prohibition of the CWA or its implementing regulations.
4. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective

Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules) set forth at 40 CFR part 22.

5. This CASA is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 CFR §22.13(b), and executed pursuant to 40 CFR §22.18(b)(2) and (3) of the Consolidated Rules.
6. Respondent admits the jurisdictional allegations in this CASA and neither admits nor denies the specific factual allegations contained herein.
7. Respondent waives its rights to a hearing before any tribunal, to contest any issue of law or fact set forth in this CASA.
8. Complainant asserts that settlement of this matter is in the public interest, and Complainant and Respondent agree that entry of this CASA and Final Order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.
9. In accordance with section 311(b)(6)(C) of the Act, 33 U.S.C. §1321(6)(C), Complainant shall provide public notice of and reasonable opportunity to comment on the proposed issuance of a final order in this matter.
10. This CASA, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.
11. This CASA contains all terms of the settlement agreed to by the parties.

B. ALLEGED VIOLATIONS

1. Respondent is a limited liability company organized under the laws of Oklahoma, and was authorized to do business in Wyoming during the periods set forth in paragraphs 14-16 of this section.
2. Respondent is a “person” within the meaning of sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§1321(a)(7) and 1362(5).
3. The Respondent owned and/or operated the following oil and/or gas production tank batteries located near Rawlins, WY during the periods set forth in paragraphs 14-16 of this section:
 - a. ESPY #3 Tank Battery located at approximately 41.59592 North, 107.394437 West;
 - b. ESPY #9 Tank Battery located at approximately 41.60416 North, 107.39377 West; and
 - c. ESPY #12 Tank Battery located at approximately 41.593329 North, 107.37042 West; hereinafter referred to as “facility” or, collectively as “the facilities.”
4. At all times relevant to this CASA, Respondent was an owner and/or operator of each of the facilities referenced in the paragraph above, within the meaning of section 311(a)(6) of the Act, 33 U.S.C. §1321(a)(6), and 40 CFR §112.2.
5. Each of the facilities owned and/or operated by Respondent constitute “onshore facilities” within the meaning of section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).
6. These facilities are “non-transportation related” “production” onshore facilities as those terms are defined at 40 CFR §112.2.

7. At each of these facilities, Respondent is engaged in drilling, producing, gathering, storing, transferring, using or consuming crude oil, a mixture of oil and produced water, and/or gas, which are "oils" as defined at §311(a)(1) of the Act, 33 U.S.C. §1321(a)(1).
8. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil ... from vessels and from onshore and offshore facilities, and to contain such discharges"
9. EPA promulgated the oil pollution prevention regulations, set forth at 40 CFR part 112. 40 CFR § 112.1(b) states that the requirements of part 112 apply:

to owners or operators of non-transportation related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines"
10. The Respondent's non-transportation production onshore facilities are subject to the oil pollution prevention requirements of 40 CFR part 112, pursuant to section 311(j) of the Act, 33 U.S.C. §1321(j), and its implementing regulations.
11. 40 CFR § 112.3 requires that owners or operators of onshore production facilities to prepare and to implement a Spill Prevention, Control, and Countermeasure (SPCC) plan in writing, and in accordance with applicable sections of part 112, including, but not limited to, sections 112.7, 112.9, and 112.10.
12. The Respondent's facilities are facilities, which, due to their locations, could reasonably be expected to discharge oil in harmful quantities, as defined in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines.

13. The Respondent's facilities could reasonably be expected to discharge oil in harmful quantities to an unnamed tributary that flows to Emigrant Creek, a tributary of Little Sage Creek which flows to Little Sage Creek, which flows to the North Platte River, a "navigable water" and "water of the United States" within the meaning of section 502(7) of the Act, 33 U.S.C. §1362(7) and 40 CFR §110.1.
14. On or about June 6, 2011, contractors for EPA conducted SPCC inspections at Tank Batteries ESPY #3 and ESPY #12.
15. On or about December 22, 2011, EPA notified Respondent of the alleged SPCC deficiencies found at Respondent's facilities.
16. From approximately January 11, 2012, through and including April 23, 2013, Respondent worked cooperatively to correct all SPCC plan deficiencies at Tank Batteries ESPY #3, ESPY #9 and ESPY #12 to achieve compliance with the oil pollution prevention requirements of 40 CFR part 112, pursuant to section 311(j) of the Act, 33 U.S.C. §1321(j).
17. Section 311(b)(6)(A) of the Act, 33 U.S.C. §1321(b)(6)(A), states in pertinent part that any owner, operator, or person in charge of an onshore facility who fails or refuses to comply with any regulation issued under section 311(j) of the Act to which that owner, operator, or person in charge is subject, may be assessed a class II civil penalty.
18. The Respondent failed to prepare and/or to implement SPCC plans in writing and in accordance with the regulations at 40 CFR §§ 112.7, 112.9, and 112.10 as required by 40 CFR §112.3 for its ESPY #3, #9, and #12 tank battery facilities.

19. Respondent's failure to prepare and/or to implement SPCC plans in writing and in accordance with the regulations at 40 CFR §§112.7, 112.9, and 112.10 constitutes three violations of 40 CFR §112.3 and sections 311(b)(6)(A) and 311(j)(1)(C) of the Act, 33 U.S.C. §§1321(b)(6)(A) and (j)(1)(C).

C. CIVIL PENALTY

1. As alleged in the preceding Paragraphs, and pursuant to section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. §1321(b)(6)(B)(ii), and 40 CFR §19.4, the Respondent is liable for civil penalties of up to \$11,000 per day for each day during which the violation continues, up to a maximum total of \$157,500 for all violations.
2. Based on the foregoing alleged violations and pursuant to the authority of section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. §1321(b)(6)(B)(ii), and 40 CFR §19.4, Complainant proposes the assessment of administrative penalties against the Respondent in the amount of one hundred and two thousand one hundred and fifty six dollars (\$102,156).
3. Complainant proposes this penalty amount after considering the applicable statutory penalty factors in section 311(b)(8) of the Act, 33 U.S.C. §1321(b)(8): the seriousness of the violation, the economic benefit to the violator, if any, resulting from the violation, 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.

4. Respondent consents to the issuance of a final order and consents for the purposes of settlement to the payment of the civil penalty in the amount of one hundred and two thousand one hundred and fifty six dollars (\$102,156).

a. If the due date of the payment falls on a weekend or legal federal holiday, the due date is the next business day. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

b. Payment shall be made by any of the methods set forth in Appendix 1 to this CASA.

c. At the same time that payment is made, notice that the payment has been made shall be provided to:

Donna Inman (8ENF-UFO) and Enforcement Scientist U.S. EPA Region 8 1595 Wynkoop St. Denver, CO 80202-1129	Tina Artemis Regional Hearing Clerk (8RC) U.S. EPA Region 8 1595 Wynkoop St. Denver, CO 80202-1129
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If a payment is made by cashiers or certified check, the notice shall include a copy of the check. If a payment is made in any other manner, the notice shall include documentation demonstrating that the payment was made.

d. In the event a payment is not received by the specified due date, interest on the late payment shall accrue from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. §3717, and will continue to accrue until payment in full is received (e.g., on the 1st late day for the first payment, 30 days of interest accrues).

e. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the date of the Final Order, and each subsequent 30-day period that the initial payment, or any portion thereof, remains unpaid, and a handling charge of fifteen dollars (\$15) shall be assessed on the 1st day after the due date of each subsequent payment, and each subsequent 30-day period that any such payment, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (e.g., the 121st day from the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount. Further, Respondent shall be subject to the fees, costs, and nonpayment penalty set forth in section 311(b)(6)(H) of the Act, 33 U.S.C. §1321(b)(6)(H).

f. Respondent agrees that the civil administrative penalty shall never be claimed as a federal or other tax deduction or credit.

D. OTHER TERMS AND CONDITIONS

1. Failure by Respondent to comply with any of the terms of this CASA shall constitute a breach of this CASA and may result in referral of the matter to the United States Department of Justice for enforcement of this CASA and for such other relief as may be appropriate.
2. Nothing in this CASA shall be construed as a waiver by Complainant or any other federal entity of its authority to seek costs or any appropriate penalty

associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this CASA.

3. This CASA, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the civil penalty owed for violations alleged in this CASA.
4. This CASA shall not affect Respondent's right to assert any defense in any action by Complainant to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
5. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this CASA.

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

Date: January 27, 2014

By: Eddie A. Sierra

for Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

NADEL AND GUSSMAN ROCKIES, LLC
Respondent

Date: January 14, 2014

By: James F. Adelson
James F. Adelson, Manager

Combined Complaint and Settlement Agreement - Appendix 1

The following are acceptable payment methods for the civil penalty required to be paid pursuant to the Agreement.

1. If payment is being made by cashier's or certified check, submit the check, including the name, docket number, and the notation, "Oil Spill Liability Trust Fund-311," payable to "**Environmental Protection Agency**" :

Regular Mail:

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

Federal Express, Airborne, or other commercial carrier:

US Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

2. Wire Transfers:

Wire transfers must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 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 "

3. ACH (also known as REX or remittance express):

ACH payments must indicate the name and docket number of this case and be paid in accordance with the following information:

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank

808 17th Street, NW

Washington, DC 20074

Contact - Jesse White 301-887-6548

ABA = 051036706

Transaction Code 22 - checking

Environmental Protection Agency

Account 310006

CTX Format

4. On-line Payment:

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below:

www.pay.gov

Enter "sfo 1.1" (without the quotation marks) in the "Search Public Forms" field.

Click on the first link to open the form, complete required fields, and then click on "Submit Data" button at bottom of form.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8
1595 Wynkoop Street; Denver, CO 80202-1129**

PUBLIC NOTICE AND OPPORTUNITY TO COMMENT ON CLEAN WATER ACT SETTLEMENT

Action: EPA is providing notice of a Complaint and Settlement Agreement with penalty assessment and the opportunity for public comment on the proposed administrative penalty assessment against Nadel and Gussman Rockies for failure to prepare and implement a spill prevention control and countermeasure plan in the ESPY oil field near Rawlins, Wyoming.

Summary: EPA is authorized in Class II proceedings under Section 311(b)(6) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(b)(6), to issue orders assessing civil penalties for violations of the CWA and implementing regulations, after providing the person subject to the penalty notice and opportunity for a hearing, and after providing the public with notice of the proposed penalty, opportunity to submit written comments and to participate in a Class II penalty proceeding (hearing), if any. The deadline for submitting public comment is thirty (30) calendar days after issuance of this notice.

On January 27, 2014, EPA filed a Complaint and Settlement Agreement pursuant to Section 311(b)(6)(B)(ii) of the Act. Pursuant to Section 311(b)(6)(C) of the CWA, EPA hereby notifies the public of this proposed penalty assessment:

In the matter of: Nadel and Gussman Rockies
15 E 5th Street # 3200
Tulsa, OK 74103-4340

EPA Docket Number: CWA-08-2014-0011

Proposed penalty in the Complaint: \$102,156.00

Alleged violations: Failure to prepare and implement a spill prevention control and countermeasure plan in the ESPY oil field near Rawlins, Wyoming, in violation of section 311(j) of the CWA, 33 U.S.C. § 1321(j).

Written comments on the Complaint and Settlement Agreement are encouraged and will be accepted at the address listed below for a period of thirty (30) calendar days after the publication of this notice. Written comments submitted by the public as well as information submitted by Nadel and Gussman Rockies will be available for public review, subject to the provisions of law restricting the disclosure of confidential information. Any person submitting written comments has a right to participate in a hearing, if one is held. The Complaint and Settlement Agreement is available for review between 9:00 a.m. and 4:00 p.m. at the address listed below and on the internet at: <http://yosemite.epa.gov/oa/rhc/epaadmin.nsf>.

Submit written comments to: Tina Artemis
Regional Hearing Clerk (8RC);
EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Telephone: (303) 312-6765.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of the Complaint and Settlement Agreement, or other documents in this proceeding (such as the regulations in 40 C.F.R. part 22, which establish procedures for hearings), or to comment upon the proposed penalty assessment, or any other aspect of the matter, should contact the Regional Hearing Clerk identified above. No action will be taken by EPA to finalize a settlement in this matter until thirty (30) calendar days after this public notice.