

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

FILED  
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In the Matter of

QEP Energy Company

Respondent.

§ Docket No. CWA-06-2013-2716  
§  
§ Proceeding to Assess a Class II  
§ Civil Penalty Under Section 309(g)  
§ of the Clean Water Act  
§  
§ ADMINISTRATIVE COMPLAINT

### I. STATUTORY AUTHORITY

This Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 309(g) of the Clean Water Act (“Act”), 33 U.S.C. § 1319(g). The Administrator delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who further delegated this authority to the Director of the Water Quality Protection Division of EPA Region 6 (“Complainant”). This Class II Administrative Complaint is issued in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. Part 22.

Based upon the following Findings of Fact and Conclusions of Law (“Findings”), Complainant finds that QEP Energy Company (“Respondent”) violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

### II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is a business incorporated under the laws of the State of Texas (domestic) and the State of Louisiana (foreign), and as such, Respondent is a “person” as that term is defined in Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 232.2.

2. At all times relevant to the violations alleged herein (“relevant time period”), Respondent owned or operated real property including oil and gas production facilities located at

three sites in Louisiana (section 15, T15N-R12W, Caddo Parish; sections 5, 8 and 17, T14N-R11W, Red River Parish; sections 2, 3 and 10, T14N-R11W, Red River Parish) (“subject property”). The oil and gas facilities include gas wells known as Campbell 1, Campbell 2, Campbell 3, Sample 2 H-1, and Sample 2 H-2 and a gas line located in the Thorn Lake Field (collectively, “production facilities”).

3. On multiple dates between July 2008 and December 2010, Respondent discharged, caused the discharge, directed the discharge and/or agreed with other persons or business entities acting at Respondent’s direction and/or on its behalf to “discharge dredged material” and/or “discharge fill material,” as defined at 40 C.F.R. § 232.2, from point sources, including equipment (e.g., earth moving equipment), in, on and to wetlands on the subject property, which were adjacent to, hydrologically connected to and/or had a significant nexus to a navigable body of water and, therefore, are waters of the United States as that term is defined at 40 C.F.R. § 232.2. These discharges were associated with the production facilities and were done without authorization under a permit issued by the United States Army Corps of Engineers (“Corps”).

4. During the relevant time period, the wetlands referred to in paragraph 3 were “navigable waters” and “waters of the United States” as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 232.2.

5. The discharged dredged and fill materials referred to in paragraph 3 are considered “pollutants” as that term is defined in Section 502(6) of the Act, 33 U.S.C. § 1362(6).

6. Each piece of equipment used for the discharges referred to in paragraph 3 acted as a “point source” as that term is defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14).

7. Under Section 301(a) of the Act, 33 U.S.C. § 1311(a), it is unlawful for any person to discharge a pollutant from a point source to waters of the United States except with the authorization of, and in compliance with, a permit issued under the Act.

8. Under Section 404 of the Act, 33 U.S.C. § 1344, the Secretary of the Army, acting through the Chief of Engineers for the Corps, is authorized to issue permits for the discharge of dredged or fill material into waters of the United States.

9. During the relevant time period, Respondent did not have a permit issued by the Corps for the discharges alleged herein.

10. Each unauthorized discharge is a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

11. Under Section 309(g)(1)(A) of the Act, 33 U.S.C. § 1319(g)(1)(A), the Administrator is authorized to assess a Class I or Class II civil penalty whenever, on the basis of any information available, the Administrator finds that a person has violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).

12. Under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), as amended by 40 C.F.R. § 19.4, for the period from March 15, 2004 through January, 12, 2009, Respondent is liable for a civil penalty in an amount not to exceed \$11,000.00 per day for each day during which a violation occurred or continues, up to a maximum of \$157,500.00. For the period after January 12, 2009, Respondent is liable for a civil penalty in an amount not to exceed \$16,000.00 per day for each day during which a violation occurred or continues, up to a maximum of \$177,500.00.

13. EPA has notified the Louisiana Department of Environmental Quality of the issuance of this Complaint and has afforded the State an opportunity to consult with EPA regarding the assessment of a civil penalty against Respondent.

14. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), EPA has notified the public of the filing of this Complaint and afforded the public reasonable opportunity to comment on the proposed penalty. At the expiration of the notice period, EPA will consider

any comments filed by the public.

### III. PROPOSED PENALTY

15. Based on the foregoing Findings, and pursuant to the authority of Sections 309(g)(1) and (g)(2)(B) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(B), EPA Region 6 finds that Respondent committed the violations alleged above and proposes to assess a Class II civil penalty not to exceed the statutory maximum stated in paragraph 12 for each day during which a violation occurred or continued, up to a maximum of \$177,500.00, for the violations alleged in this Complaint.

16. In determining the amount of the civil penalty, EPA will consider the factors set forth in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), including the nature, circumstances, extent and gravity of the violation(s); Respondent's ability to pay, prior history of such violations, degree of culpability, and economic benefit or savings (if any) resulting from the violation; and such other matters as justice may require.

### IV. FAILURE TO FILE AN ANSWER

17. If Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the imposition of a penalty, Respondent must file an Answer to this Complaint within thirty (30) days after service of this Complaint whether or not Respondent requests a hearing as discussed below.

18. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15. Failure to file an Answer to this Complaint within thirty (30) days of service of the Complaint shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to a hearing. Failure to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion under 40 C.F.R. § 22.15(d).

19. If Respondent does not file an Answer to this Complaint within thirty (30) days after service of this Complaint, a Default Order may be issued against Respondent pursuant to 40 C.F.R. § 22.17. A Default Order, if issued, would constitute a finding of liability and could make the full amount of the penalty proposed in Complainant's Motion for Default due and payable by Respondent without further proceedings thirty (30) days after a final Default Order is issued.

20. Respondent must send his Answer to this Complaint, including any request for a hearing, and all other pleadings to:

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

Dallas, Texas 75202-2733

Respondent shall also send a copy of its Answer to this Complaint to the following EPA attorney assigned to this case:

Tucker Henson (6RC-EW)  
U.S.EPA Region 6  
1445 Ross Avenue, Suite 1200

Dallas, Texas 75202-2733

21. The Answer must be signed by Respondent, Respondent's counsel, or other representative on behalf of Respondent and must contain all information required by 40 C.F.R. §§ 22.05 and 22.15, including the name, address, and telephone number of Respondent and Respondent's counsel. All other pleadings must be similarly signed and filed.

#### V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

22. Respondent may request a hearing to contest any material allegation contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g). The procedures for hearings are set out at 40

C.F.R. Part 22.

23. Any request for hearing should be included in the Respondent's Answer to this Complaint; however, as discussed above, Respondent must file an Answer meeting the requirements of 40 C.F.R. § 22.15 in order to preserve the right to a hearing or to pursue other relief.

24. Should a hearing be requested, members of the public who commented on the issuance of the Complaint during the public comment period will have a right to be heard and to present evidence at such hearing under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B).

## VI. SETTLEMENT

25. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. Respondent may appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Jeanene Peckham at (214) 665-6411.

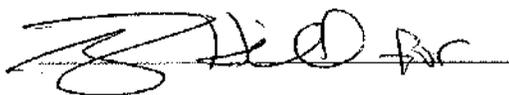
26. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive Respondent's right to a hearing on any matter stipulated to therein or alleged in the Complaint. Any person who commented on this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such CAFO and to hold a hearing on the issues raised in the Complaint. Such a petition would be granted and a hearing

held only if the evidence presented by the petitioner's comment was material and was not considered by EPA in the issuance of the CAFO.

27. Neither assessment nor payment of a penalty in resolution of this action will affect Respondent's continuing obligation to comply with all requirements of the Act, the applicable regulations and permits and/or any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), including one relating to the violations alleged herein.

JUN 28 2013

Date



William K. Honker, P.E.  
Director  
Water Quality Protection Division  
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

JUN 28 2013

I certify that on \_\_\_\_\_ the original and a true and correct copy of this Complaint was filed with the Regional Hearing Clerk, EPA Region 6, and that true and correct copies of this Complaint were deposited with the U.S. Postal Service addressed to the following persons.

Certified Mail, return receipt requested:  
CT Corporation System  
Registered Agent for QEP Energy Company  
5615 Corporation Blvd., Ste. 400B  
Baton Rouge, Louisiana 70808

Mr. Chris Smith  
Attorney for QEP Energy Company  
Thompson & Knight LLP  
98 San Jacinto Blvd., Suite 1900  
Austin, Texas 78701-4238

  
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