

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

07  
REGIONAL ADMINISTRATOR  
EPA REGION 6

In the Matter of	§	Docket No. CWA-06-2007-1835
	§	
Bobby Rowe Energy, Inc., an Oklahoma Corporation,	§	
	§	Proceeding to Assess a Class I
	§	Civil Penalty Under § 309(g)
	§	of the Clean Water Act
Respondent	§	
	§	ADMINISTRATIVE COMPLAINT
Facility Number OKU000616	§	

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 ("the Act"), 33 U.S.C. § 1319(g). The Administrator of EPA has delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who has further delegated this authority to the Director of the Compliance Assurance and Enforcement Division of EPA Region 6, who further delegated this authority to the Associate Director of the Water Enforcement Branch ("Complainant"). This Class I Administrative Complaint is issued in accordance with, and this action will be conducted under, "the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," including Rules related to Administrative Proceedings not Governed by Section 554 of the Administrative Procedure Act, 40 C.F.R. §§ 22.50 - 22.52.

Based on the following Findings, Complainant finds that Respondent has 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. Bobby Rowe Energy, Inc. ("Respondent") is a corporation which was incorporated under the laws of the State of Oklahoma, and as such, Respondent is a "person," as that term is defined at Section 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. At all times relevant to this action, Respondent owned or operated an oil field facility located in the Northwest Quarter of Section 11, Township 14 North, Range 11 East, Beggs, Okmulgee County, Oklahoma ("the facility") and was therefore an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

3. At all times relevant to this action, the facility was a "point source" of a "discharge" of "pollutants" (oil field brine) to the receiving waters of a tributary of Salt Creek, which are "waters of the United States" within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

4. Because Respondent owned or operated a facility which was a point source of a discharge of pollutants to waters of the United States, Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System (NPDES) program.

5. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. Under to the NPDES program, the discharge of oil field brine to waters of the United States is a non-permitted discharge.

6. On November 8 and 9, 2006, the facility was inspected by an EPA Field Inspector, and the following observations were noted:

- (a) Oil field brine was discharged from a facility flow line, located at Latitude 35° 42.39' North and Longitude 96° 6:87' West, to a tributary of Salt Creek located at Latitude 35° 42.71' North and Longitude 96° 6.99' West.
- (b) Fluids at the discharge point of entry into the tributary measured over 80,000 parts-per-million (ppm) total soluble salts (TSS).
- (c) Fluids upstream of the discharge point of entry measured 900 ppm TSS.
- (d) Fluids approximately 3,200 feet downstream of the point of entry measured 80,000 ppm TSS.
- (e) There was a large area of seeming long-term damage to vegetation from brine discharges.

7. On December 4, 2006, the facility was inspected by an EPA Field Inspector. The inspector observed that the sloped area down-gradient of the flow line was still contaminated from brine and acted as a point source discharge of pollutants. The inspector determined that fluids at or around the discharge point of entry measured 35,000 to 75,000 ppm TSS.

8. On December 21, 2006, the facility was inspected by an EPA Field Inspector. The inspector observed that the same sloped area down-gradient of the flow line (referenced above in paragraph 7) was still contaminated from brine and acted as a point source discharge of pollutants. The inspector determined that fluids at or around the discharge point of entry measured 17,000 to 29,000 ppm TSS.

9. Each day of unauthorized discharge described above was a violation of Section 301 of the Act, 33 U.S.C. § 1311.

10. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), Respondent is liable for a civil penalty in an amount not to exceed \$11,000 per day for each day during which a violation continues, up to a maximum of \$32,500.

11. EPA has notified the Oklahoma Corporation Commission, District 3, of the issuance of this Complaint and has afforded the State an opportunity to consult with EPA regarding the assessment of an administrative penalty against Respondent as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

12. EPA has notified the public of the filing of this Complaint and has afforded the public thirty (30) days to comment on the proposed penalty as required by Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A). At the expiration of the notice period, EPA will consider any comments filed by the public.

### III. Proposed Penalty

13. Based on the foregoing Findings, and pursuant to the authority of Sections 309(g)(1) and (g)(2)(A) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(A), EPA Region 6 hereby proposes to assess against Respondent a penalty of nineteen thousand dollars (\$19,000).

14. The proposed penalty amount was determined based on the statutory factors specified in Section 309(g)(3), 33 U.S.C. § 1319(g)(3), which includes such factors as the nature, circumstances, extent and gravity of the violation(s), any prior history of such violations, the degree of culpability, economic benefit, if any, and such other matters as justice may require.

15. Complainant has specified that the administrative procedures specified in 40 C.F.R. Part 22, Subpart I, shall apply to this case, and the administrative proceedings shall not be governed by Section 554 of the Administrative Procedure Act. However, pursuant to

40 C.F.R. § 22.42(b), Respondent has a right to elect a hearing on the record in accordance with 5 U.S.C. § 554, and Respondent waives this right unless Respondent, in its Answer, requests a hearing in accordance with 5 U.S.C. § 554.

#### IV. Failure to File an Answer

16. If Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, 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.

17. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15 (copy enclosed). 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 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).

18. 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 this Complaint due and payable by Respondent without further proceedings sixty (60) days after a final default order is issued.

19. Respondent must send its Answer to this Complaint, including any request for hearing, and all other pleadings to:

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

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

Ms. Yerusha Beaver (6RC-EW)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 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, including 40 C.F.R. § 22.50 through § 22.52.

23. Any request for hearing should be included in 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

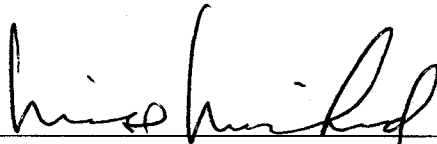
25. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. Respondent may wish to 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 Mr. Matt Rudolph, of my staff, at (214) 665-6434.

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 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 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.

5/22/07

Date



Mike Michaud  
Associate Director  
Water Enforcement Branch  
Compliance Assurance and  
Enforcement Division



CERTIFICATE OF SERVICE

I certify that the foregoing Class I Administrative Complaint was sent to the following persons, in the manner specified, on the date below:

- Original hand-delivered: Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733
- Copy by certified mail,  
return receipt requested: Mr. Stephen Rowe, Owner  
Bobby Rowe Energy, Inc.  
P.O. Box 240  
Beggs, OK 74421
- Copy by mail: Mr. Terry Grooms, District Manager  
Oklahoma Corporation Commission, District 1  
115 West 6th Street, Box 779  
Bristow, OK 74010
- Hand-delivered: Ms. Yerusha Beaver (6RC-EW)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Dated: MAY 25 2007

