



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

MAY 27 2011

Ref: 8ENF-L

SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John Christopher Dykes, Registered Agent
Family Tree Corporation
2150 W. 29th Avenue, Suite 500
Denver, CO 80211

Re: In the Matter of Family Tree Corporation
Docket No. **CWA-08-2011-0013**
Administrative Complaint and Opportunity
to Request a Hearing

Dear Mr. Dykes:

Enclosed please find an Administrative Complaint and Opportunity to Request a Hearing (Complaint) issued by the U.S. Environmental Protection Agency (EPA) pursuant to its authority under § 311(b)(6)(B) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6)(B). The Complaint is based on alleged violations of § 311(j) of the Act.

The Complaint cites Family Tree Corporation (Family Tree), for failing to prepare and implement a Spill Prevention Control and Countermeasure (SPCC) plan for the Pilot Butte Field facility located in Fremont County, Wyoming, in accordance with the oil pollution prevention regulations set forth at 40 C.F.R. §§ 112.7, 112.9, and 112.10 as required by 40 C.F.R. § 112.3 for a minimum duration of 18 months.

The Complaint proposes the assessment of administrative penalties against Family Tree in the amount of \$76,300. EPA proposed this penalty amount after considering the applicable statutory penalty factors in § 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8): the seriousness of the violations; the economic benefit to the violator resulting from the violations; the degree of culpability involved; any other penalty for the same incident; any history of prior violations; the economic impact of the penalty on the violator; and any other factors as justice may require.

Family Tree has the right to a hearing to contest the factual allegations in the Complaint. A copy of the procedures for such a hearing is enclosed for review. Please note the requirements for an answer set forth in 40 C.F.R. §§ 22.15 and 22.38. **If Family Tree wishes to contest the allegations or the penalties proposed in the Complaint, it must file a written answer within thirty (30) days**

of receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:

Ms. Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

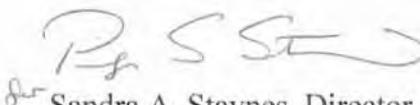
If Family Tree does not file an answer by the applicable deadline, it may be found in default. A default judgment may impose the full penalty proposed in the complaint.

Whether or not Family Tree requests a hearing, it may confer informally with EPA concerning the alleged violations or the proposed penalty amount. However, please note that a request for an informal conference does **not** extend the thirty (30) day period for filing an answer and/or requesting a hearing. Family Tree has the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but this is not required.

The Small Business Regulatory Enforcement and Fairness Act (SBREFA) may apply to this situation. Enclosed is a small business information sheet, relating to the Small Business Regulatory Enforcement and Fairness Act (SBREFA), outlining compliance assistance resources available to small businesses and small governments in case these are relevant. SBREFA does not eliminate the responsibility to comply with the Act.

If Family Tree has any questions, the most knowledgeable people on my staff regarding this matter are Amy Swanson and Donna Inman. Ms. Swanson is in our Legal Enforcement Program and can be reached at (303) 312-6906 if Family Tree wishes to request an informal settlement conference or if Family Tree's attorney has questions. Ms. Inman is in our Oil Pollution Act Technical Enforcement Program and can be reached for technical questions at (303) 312-6201.

Sincerely,



Sandra A. Stavnes, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

enc: Complaint and Notice of Opportunity for Hearing
Consolidated Rules of Practice, 40 C.F.R. Part 22
SBREFA Information Sheet

cc: Kim Harjo, Chairwoman, Northern Arapaho Tribe
Mike LaJeunesse, Chairman, Eastern Shoshone Tribe
Don Aragon, Wind River Environmental Quality Commission Director

bcc: Amy Swanson, 8ENF-L
Donna Inman, 8ENF-UFO
Brenda Cazier, 8ENF-PT
Tina Artemis, 8RC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2011 MAY 27 AM 11:01

IN THE MATTER OF:)
) **ADMINISTRATIVE COMPLAINT AND**
) **OPPORTUNITY TO REQUEST A HEARING**
Family Tree Corporation)
2150 W. 29th Avenue, Suite 500)
Denver, CO 80211)
)
)
Respondent.) Docket No. **CWA-08-2011-0013**

FILED
REGION VIII
CLERK

LEGAL AUTHORITY

1. This Administrative Complaint is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act (Act), 33 U.S.C. §§ 1319(g) and 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990. The Administrator has delegated this authority to the Regional Administrator of EPA, Region 8, who in turn has delegated it to the undersigned EPA officials (Complainant).

2. Pursuant to Section 311(b)(6)(B)(i) of the Act, and in accordance with 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,” codified at 40 C.F.R. Part 22 (Part 22), Complainant hereby provides notice of its proposal that the Administrator assess a civil penalty against Respondent Family Tree Corporation (Respondent) for failing to comply with the Spill Prevention Control and Countermeasure regulations set forth at 40 C.F.R. Part 112 under the authority of Section 311(j) and other provisions of the Clean Water Act, 33 U.S.C., §§ 1251 *et seq.* (SPCC regulations). Complainant also hereby provides notice of Respondent's opportunity to file an Answer to this

Complaint and to request a hearing on the proposed penalty assessment. Subpart I of Part 22 applies to this proceeding.

ALLEGATIONS

3. 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 onshore . . . facilities, and to contain such discharges”

4. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA his Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities.

5. EPA subsequently promulgated the SPCC regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the Act, 33 U.S.C. § 1251 *et seq.*, which established certain procedures, methods and requirements upon each owner and operator of a non-transportation-related onshore facility if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as EPA has determined in 40 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States (harmful quantity).

6. Respondent is a corporation organized under the laws of and doing business within the State of Wyoming. 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), and 40 C.F.R. § 112.2.

7. Beginning in the late 1990s and for all times relevant to this action, Respondent is the owner and/or operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2 of the Pilot Butte Field facility (facility). The facility is located in Sections 21, 22, 27, and 28, Township 3 North, Range 1 West, Fremont County, Wyoming.

8. The facility includes individual petroleum production wells with at least one aboveground bulk oil storage tank with a capacity of 100 to 400 barrels (4,200 to 16,800 gallons) including, but not limited to, the Tribal Susie Enos, Enos No. 11, and McBride Fee. Some production sites also have heater/treaters and/or evaporation ponds. The facility's 2002 SPCC Plan lists the total storage capacity for the facility at 5,915 barrels (248,430 gallons).

9. The Wind River, an interstate perennial river, bisects the facility into a northern and southern half. Drainage from the facility flows overland a minimum of .33 miles to the Wind River.

10. Crude oil and oily produced water are oils within the meaning of "oil" as defined at Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

11. The Wind River is a navigable water of the United States within the meaning of 40 C.F.R. § 112.2 and Section 502(7) of the Act, 33 U.S.C. § 1362(7).

12. Respondent is engaged in producing, gathering, storing, transferring, using, or consuming oil or oil products located at the facility.

13. The facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2 Appendix A,¹ as incorporated by reference within 40 C.F.R. § 112.2.

¹ Appendix A excerpts a portion of an EPA/CG MOU that defines "non-transportation-related" for purposes of Executive Order 11548 (July 20, 1970). EO 12777, cited above, is the successor to EO 11548.

14. The facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

15. The facility is a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity (an SPCC-regulated facility).

16. Pursuant to the Act, E.O. 12777, and 40 C.F.R. § 112.1 Respondent, as the owner and/or operator of an SPCC-regulated facility with an aggregate aboveground oil storage capacity greater than 1,320 gallons is subject to the SPCC regulations.

17. 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated onshore oil production facility must prepare a written SPCC plan in accordance with Part 112, including but not limited to, Sections 112.7, 112.9 and 112.10.

18. On December 1, 2009, EPA conducted an unannounced SPCC inspection at the facility.

19. The following SPCC implementation measures were found to be deficient at the facility at the time of the December 1, 2009 inspection:

- a. No or inadequate containment for some areas, such as loading/unloading areas and flowlines (40 C.F.R. § 112.7(c));
- b. Inadequate inspections and management of facility (40 C.F.R. § 112.7(e));
- c. Inadequate training for personnel (40 C.F.R. § 112.7(f));
- d. Accumulated oil not removed from inside diked areas, outside diked areas, and pits (40 C.F.R. § 112.9(b));
- e. Retained rainwater not inspected to ensure it will not cause a discharge (40 C.F.R. §112.9(b)(1));
- f. Inadequate secondary containment for some tanks, separators and/or heater/treaters (40 C.F.R. §112.9(c)(2));
- g. Tanks not engineered to prevent overfilling (40 C.F.R. §112.9(c)(4));
- h. Inadequate inspection and maintenance of valves, piping, and well heads (40 C.F.R. §112.9(d)(1)).

20. EPA reinspected the facility on June 30, 2010, and observed the same type of SPCC implementation deficiencies listed in Paragraph 19 and also some tanks with no secondary containment.

21. The storage capacities observed during the EPA inspections do not correspond to the storage capacities listed in the SPCC Plan or in the facility's April 10, 2010 response to the information request. This indicates that the facility's SPCC Plan has not been amended to reflect storage capacity changes at some of the tank batteries in violation of 40 C.F.R. § 112.5(a). This further indicates that the 2002 SPCC Plan does not contain the plan review documentation in violation of 40 C.F.R. § 112.5(b).

22. Respondent's failure to prepare and implement an SPCC plan for the facility in accordance with 40 C.F.R. §§ 112.7 and 112.9 constitutes a violation of 40 C.F.R. § 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 1321(j)(1)(C). On information and belief, Respondent has violated these requirements for each day beginning December 1, 2009, for a total period of approximately 515 days in violation of 40 C.F.R. § 112.3.

23. As alleged in the preceding Paragraph, and pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. § 19.4, the Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

PROPOSED PENALTY

Based on the forgoing Allegations, and pursuant to the authority of Sections 309(g)(2)(B) and 311(b)(6)(B)(ii) of the Act, and 40 C.F.R. § 19.4, the Complainant proposes that the Administrator issue a Final Order assessing administrative penalties in the amount of \$76,300. The Complainant bases this proposal after considering the following applicable statutory penalty

factors set forth in Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8): the seriousness of the violations, the economic benefit to the violator resulting from the violations, 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 factors as justice may require. Specifically, the proposed penalty amount is based on Respondent's major noncompliance for a duration of at least 18 months and the potential for a discharge to have a moderate environmental impact.

OPPORTUNITY TO REQUEST A HEARING

As provided in the Act, Respondent has the right to a public hearing to contest this Complaint. If Respondent (1) contests the factual claims made in this Complaint; (2) contests the appropriateness of the proposed penalty; and/or (3) asserts that it is entitled to judgment as a matter of law, it must file a written Answer in accordance with Sections 22.15 and 22.38 of the Consolidated Rules within thirty (30) calendar days after receipt of this Complaint. The Answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which Respondent has knowledge; (2) state circumstances or arguments which are alleged to constitute grounds for defense; (3) state the facts Respondent disputes; (4) state the basis for opposing the proposed relief; and (5) specifically request an administrative hearing, if desired. Failure to admit, deny or explain any material factual allegation in this Complaint will constitute an admission of the allegation.

The Answer and one copy must be sent to:

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

and a copy must be sent to the following attorney:

Amy Swanson, Enforcement Attorney (8ENF-L)
U.S. EPA Region 8, Legal Enforcement Program
1595 Wynkoop Street
Denver, CO 80202-1129
Telephone: (303) 312-6906

IF RESPONDENT FAILS TO REQUEST A HEARING, IT WILL WAIVE ITS RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF RESPONDENT FAILS TO FILE A WRITTEN ANSWER OR PAY THE PROPOSED PENALTY WITHIN THE THIRTY (30) CALENDAR 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.

TERMS OF PAYMENT FOR QUICK RESOLUTION

If the Respondent does not contest the findings and penalty proposal set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within thirty (30) calendar days of receipt of this Complaint, no Answer need be filed. No later than thirty (30) days after the effective date of the Final Order, the Respondent shall pay the amount of \$76,300 by means of a cashier's or certified check, or by electronic funds transfer (EFT). The payment shall be made by remitting a cashier's or certified check, including the name and docket number of the case, referencing "Oil Spill Liability Trust Fund-311," for the amount, payable to the : "**Environmental Protection Agency,**" to:

**US checks by regular
US postal service mail:**

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

**Federal Express, Airborne,
Or other commercial carrier:**

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

Wire transfers:

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 “

On Line Payment:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open form and complete required fields.

A copy of the check or wire transfer shall be simultaneously sent to:

Donna K. Inman (8ENF-UFO)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Payment of the penalty in this manner does not relieve Respondent of its obligation to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

PUBLIC NOTICE

Pursuant to Section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C), the Complainant is providing public notice of and reasonable opportunity to comment on this proposed issuance of a complaint assessing administrative penalties against you. If a hearing is held on this matter, members of the public who submitted timely comments on this proceeding have the right under

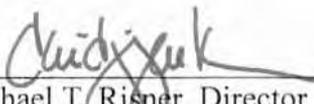
Section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C), to be heard and present evidence at the hearing.

SETTLEMENT CONFERENCE

The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations and is willing to explore this possibility in an informal settlement conference. If you or your attorney, if you choose to be represented by one, have any questions or wish to have an informal settlement conference with EPA, please call Senior Enforcement Attorney Amy Swanson at (303) 312-6906. 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 the Consolidated Rules. If a settlement can be reached, its terms must be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Regional Judicial Officer.

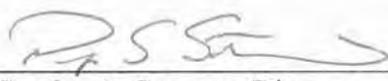
**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**
Complainant.

Date: 25 May 2011



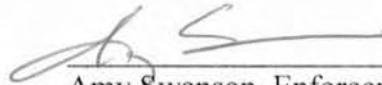
Michael T. Risner, Director
David Janik, REU Supervisory Attorney
Office of Enforcement, Compliance
and Environmental Justice

Date: 5/25/2011



For Sandra A. Stavnes, Director
UIC/FIFRA/OPA Technical Enforcement Program

Date: 5/26/2011



Amy Swanson, Enforcement Attorney
U.S. EPA, Region 8
1595 Wynkoop Street (8ENF-L)
Denver, CO 80202-1149
Colorado Atty. Reg. No. 26488
Telephone: 303/312-6906
Facsimile: 303/312-6953

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the ADMINISTRATIVE COMPLAINT AND OPPORTUNITY TO REQUEST HEARING was hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent via certified mail to:

John Christopher Dykes, Registered Agent
Family Tree Corporation
2150 W. 29th Avenue, Suite 500
Denver, CO 80211

5/27/2011
Date


Signature