

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED

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REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of:

Altec Petroleum Group, Inc.

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Docket No. CWA-06-2008-1832

COMPLAINANT'S PRE HEARING EXCHANGE

This case arises under § 309(g) of the Clean Water Act ("the Act"), 33 U.S.C. § 1319(g). The authority to bring this action has been delegated to the Regional Administrator, EPA Region 6, and has been further delegated to the Director of the Compliance Assurance and Enforcement Division, the United States Environmental Protection Agency, Region 6 (Complainant).

PROCEDURAL BACKGROUND

On May 20, 2008, the Complainant filed a Class I Administrative Complaint and Notice of Opportunity for Hearing with the Regional Hearing Clerk and properly served the Respondent. The Complaint alleged that the Respondent, Altec Petroleum Group, violated the Act and the regulations promulgated thereunder. The Respondent requested a hearing on the matter by letter dated June 16, 2008. On June 30, 2008, Regional Judicial Officer, Michael C. Barra, ("RJO") issued a scheduling Order establishing a schedule, and requiring Complainant and Respondent to discuss the possibility of settlement by July 23, 2008 and file a report on the status of settlement negotiations in the matter on or before July 30, 2008.

On July 23, 2008, Complainant and Respondent filed a Joint Status Report. The Joint Status Report advised the RJO that the parties had met to discuss settlement and that although settlement had not been reached, both parties believed that settlement of the matter was likely. Additionally, Complainant and Respondent requested an extension of the deadline for filing pre-hearing exchanges. On July 31, 2008, the RJO issued his First Amended Scheduling Order setting new compliance dates for the pre-hearing exchanges and responses.

PRE-HEARING EXCHANGE

This filing constitutes Complainant's Pre-hearing Exchange.

I. WITNESSES AND EXHIBITS:

A. WITNESSES

The Complainant may call the following listed witnesses to testify at the hearing of this case.

1. **Mr. Matthew Rudolph
Environmental Engineer
EPA Region 6
Dallas, Texas**

Mr. Rudolph may be called to testify, as part of the Complainant's case in chief and/or for rebuttal, as both a fact witness and as a qualified expert witness. He may provide opinion testimony and other testimony concerning violations alleged in the Complaint, the proposed penalties in the Complaint, Respondent's compliance history, communications with Respondent, and the potential for harm resulting from Respondent's violations.

2. **Mr. Kent Sanborn**
EPA Water Enforcement Branch Inspector
EPA Region 6
Dallas, Texas

Mr. Sanborn may be called to testify as part of the Complainant's case in chief and/or rebuttal, as a fact witness. He may provide opinion testimony and other testimony concerning inspection of the facility, violations alleged in the Complaint, Respondent's compliance history, communications with Respondent, and the potential for harm resulting from Respondent's violations.

3. **Mr. John Rempe**
Citizen / Biologist, Oklahoma Department of Wildlife Conservation

Mr. Rempe may be called to testify as part of the Complainant's case in chief and/or rebuttal, as a fact witness. He may provide opinion testimony and other testimony concerning the facility, observations made at the facility, violations alleged in the Complaint, communications with Respondent, and the potential for harm resulting from Respondent's violations.

4. **Custodian of Records**, EPA, who may be called to establish the foundation for certain exhibits, and the absence or receipt of certain records.

5. **Unnamed secretaries**, EPA, who may be called, as necessary, to establish the foundation for certain exhibits.

6. Any witness named by the Respondent.

7. Any rebuttal witnesses, as required.

Although Complainant does not anticipate the need to call any additional witnesses, Complainant respectively reserves the right to amend or supplement the witness list and to expand or otherwise modify the scope and extent of testimony of any

potential witnesses, where appropriate, and upon adequate notice to the Presiding Officer and Respondent.

B. EXHIBITS

At the hearing, Complainant intends to offer into evidence the following listed documents, each of which is attached hereto. The Complainant's exhibits are identified as Government's Ex. (Number). The Complainant will relabel the exhibits if called to do so by the Presiding Officer.

Government's Ex. 1

Photos of the Altec pit taken by Mr. John Rempe.

Government's Ex. 2

Photo of the well head of the Altec pit taken by Mr. John Rempe.

Government's Ex. 3

Photos of the Altec pit with liners taken by Mr. John Rempe.

Government's Ex. 4

Photos of the Altec pit with trucks in background taken by John Rempe.

Government's Ex. 5

Photos of creek taken by Mr. John Rempe.

Government's Ex. 6

Photo of residue taken by John Rempe.

Government's Ex. 7

Photo of bag drill cuttings at the Altec facility taken by Mr. John Rempe.

Government's Ex. 8

Map of Altec facility in relation to the creek.

Government's Ex. 9

Letter from the Office of Attorney General State of Oklahoma, dated September 19, 2007 to Patrick Adams, President, Altec Testing & Engineering, Inc.

Government's Ex. 10

Letter from the Office of Attorney General State of Oklahoma, dated September 20, 2007 to Patrick Adams, President, Altec Testing & Engineering, Inc.

Government's Ex. 11

Facsimile from Kent Sanborn to Matt Rudolph, dated 11/15/2007, re: Altec – water quality report. (labID 476528)

Government's Ex. 12

Facsimile from Kent Sanborn to Matt Rudolph, dated 11/15/2007, re: Altec – soil salinity report. (labID 476393)

Government's Ex. 13

Facsimile from Kent Sanborn to Matt Rudolph, dated 11/15/2007, re: Altec – water quality report. (labID476530)

Government's Ex. 14

Facsimile from Kent Sanborn to Matt Rudolph, dated 11/15/2007, re: Altec – soil salinity report. (labID476394)

Government's Ex. 15

Inspection report dated 9/21/2007 – conducted by Mr. Kent Sanborn.

Government's Ex. 16

EPA, Region 6, Cease and Desist Administrative Order, dated November 16, 2007 to Patrick Adams, President of Altec Testing and Engineering.

Government's Ex. 17

EPA, Region 6, Certified Mail Receipt sent to Altec Testing and Engineering.

Government's Ex. 18

Follow up inspection report dated 3/10/08 – conducted by Mr. Kent Sanborn.

Government's Ex. 19

EPA, Region 6, Letter dated May 20, 2008 to Ms. Diane Daniels, Environmental Director, Osage Nation Environmental and Natural Resources Department.

Government's Ex. 20

EPA, Region 6, Administrative Complaint, dated May 20, 2008 to Mr. Patrick Adams, President, Altec Petroleum Group, Inc.

Government's Ex. 21

Answer from Altec Testing and Engineering, Inc., dated June 23, 2008, to Mr. John Blevins, Director, Compliance Assurance and Enforcement Division.

Government's Ex. 22

Resume of Matthew Rudolph.

Government's Ex. 23

Record of Communication, dated 3/12/2008.

Government's Ex. 24

Penalty Calculation Explanation for Altec Petroleum prepared by Matthew Rudolph.

Government's Ex. 25

Interim Clean Water Act Settlement Penalty Policy.

Government's Ex. 26

E-mail, two invoices and certification from Mr. Patrick Adams to EPA, Region 6, dated 7/30/08.

Government's Ex. 27

Photos of Altec facility taken by Mr. Kent Sanborn.

Government's Ex. 28

Handwritten notes written by Matthew Rudolph, dated 09/13/07.

Government's Ex. 29

Ambient Water Quality Criteria for Chloride – 1988.

Government's Ex. 30

Analysis of Water Quality for Livestock.

Government's Ex. 31

Natural resources and Water – Measuring Salinity.

Government's Ex. 32

Issue Paper – Total Dissolved Solids (TDS).

Government's Ex. 33

Regional Judicial Officer's June 30, 2008 Scheduling Order.

Government's Ex. 34

EPA, Region 6, and Altec Joint Status Report, July 23, 2008.

Government's Ex. 35

Regional Judicial Officer's July 31, 2008 First Amended Scheduling Order.

II. PENALTY EXPLANATION

Under Section 309(g)(3) of the Clean Water Act (CWA), there are several factors specified for determining the amount of the penalty. These factors take into account the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of

culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

The following discussion addresses the maximum penalty and days of violation, the eight different components under CWA section 309(g)(3), and the penalty which should be assessed at a hearing for this case.

Statutory Maximum Penalty and Days of Violation

Under Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(2)(A), the Respondent is liable for a civil penalty in an amount not to exceed \$11,000 per day during which a violation continues, up to a maximum of \$32,500.

Based on EPA's inspections; information submitted from the Oklahoma Department for Wildlife Conservation; and information submitted from the Respondent there was at a minimum two days of violation.

A drilling reserve pit located at the facility seeped pollutants to a tributary of the South Fork of Pond Creek on or before the EPA's inspection conducted on September 21, 2007. The Oklahoma Department for Wildlife Conservation first documented this seeping pit with photos on or about August 29, 2007. The Respondent submitted documents (Invoice 3005) stating they had spent \$685 cleaning up a spill on September 6, 2007.

It appears the pit was back-filled in on or about September 20, 2007, from evidence provided by the Oklahoma Department for Wildlife Conservation and the Respondent.

The same reserve pit was closed out improperly and continued to seep pollutants after September 21, 2007, to the tributary of the South Fork of Pond Creek. This is

evident from the EPA's inspection conducted on March 10, 2008; samples taken by the Oklahoma Department for Wildlife Conservation; and documentation submitted by the Respondent (Invoice 3010). Invoice 3010 noted "Sucked out hole" on both October 8, 2007 and October 15, 2007. This hole being referenced is located in the flow path between the pit and the creek, and the Respondent knowingly was discharging fluids into the hole. Each day the pit seeped or discharged pollutants to the tributary of the South Fork of Pond Creek was a violation of the CWA.

Days of violation – At least two

Statutory Maximum Penalty - \$22,000

CWA Section 309(g)(3) Factors

Nature of the violation - unauthorized and unpermitted discharge of oil field brine (brine) in violation of Section 301 of the CWA. The term "oil field brine" is being used to describe fluids associated with oil and gas activities which are high in salts. Brine includes but is not limited to the following: drilling fluids; drilling returns; produced fluids; cementing fluids; hydraulic stimulation fluids; and etc. Brine is a prohibited pollutant and is extremely toxic to a fresh water ecosystem. No permit was issued for this brine discharge. One of the properly ways of disposing of brine is with a permitted Class II injection well.

Circumstances – The "Altec Petroleum" drilled an oil/gas well in a wildlife conservation area, and next to a relatively permanent creek. A seeping reserve pit at the facility located approximately 470 feet up-gradient of the creek acted as a "point source" "discharge" of "pollutants" to "waters of the US."

Extent and gravity of violation – This factor quantifies the gravity of the violation. The gravity of violation factor is broken down into four different components:

Significance of violation - This factor is based on the degree of exceedance of the most significant effluent limit violation in each month.

Health and environmental harm - A value for this factor is selected for each month in which one or more violations present actual or potential harm to human health or to the environment. Fluids located in the reserve pit which were discharged to the creek were extremely high in chlorides, salts, cementing material, drilling returns, and other contaminants.

Number of effluent violations - This factor is based on the total number of effluent limit violations each month.

Number of non-effluent limit violations - There are six types of non-effluent violations: 1) monitoring and reporting; 2) pretreatment program implementation; 3) sludge handling; 4) unauthorized discharges; 5) permit milestone schedules; and 6) other types of non-effluent violations. For this case the non-effluent violations are: monitoring and reporting; and unauthorized discharges.

Ability to pay – The Respondent has not submitted any documentation in regards to this component. It is believed the Respondent can pay the penalty.

Prior history of such violations – EPA has no knowledge of the Respondent having any prior history of similar violations.

Degree of culpability – The Respondent knowingly had a seeping pit, which was discharging harmful pollutants to a creek. The Respondent neglected and made very poor efforts to correct this problem and neglected to correct any harm this problem had caused

to the environment. The Respondent knowingly drilled this well in an environmentally sensitive area. This area is a wildlife conservation area and the reserve pit was constructed close to a relatively permanent creek. The Respondent's parent company is an environmental consulting company and therefore should have known better.

The Respondent made a poor attempt to line the pit to stop the seep. The Respondent also made poor attempts in closing out the pit, which continued to seep pollutants after it was back filled in.

Economic benefit or savings – avoided or delayed costs for being noncompliant. This cost was calculated to be \$740 (BEN model).

Other matters as justice may require – none at this time.

Penalty – \$19,500 as proposed in the Complaint.

III. HEARING LOCATION

Pursuant to 40 C.F.R. § 22.21(d), the desired location of the hearing shall be determined in accordance with 40 C.F.R. § 22.19(d). Complainant requests the hearing to be held in Tulsa, Oklahoma and estimates that it will take approximately two days to put on its case.

IV. SPECIAL ACCOMMODATIONS

No interpretation or other special accommodations are needed at this time.

V. CONCLUSION

The above constitutes the Complainant's Pre hearing Exchange, for which Complainant respectfully requests the right to supplement or amend upon adequate notice to the Pre hearing Officer and Respondent.

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of September 2008, the original of the foregoing Pre-hearing Exchange for Altec Petroleum Group, CWA-06-2008-1832 was hand delivered to the Regional Hearing Clerk, and that a true and correct copy of the foregoing has been served upon the following:

VIA Certified Mail

Patrick Adams
President
Altec Testing and Engineering, Inc.
6035 Fremont Street
Riverside, CA 92504

DATED: 9/26/08

SIGNED: 