

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

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REGIONAL HEARING CLERK
EPA REGION VI

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|-----------------------------|--------------------------------------|
| In the Matter of | § Docket No. CWA-06-2013-1736 |
| | § |
| Clean Energy Texas LNG, LLC | § Proceeding to Assess a Class II |
| | § Civil Penalty under Section 309(g) |
| Respondent | § of the Clean Water Act |
| | § |
| | § ADMINISTRATIVE COMPLAINT |
| NPDES Permit No. TX0124648 | § |

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 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 Compliance Assurance and Enforcement 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,” including rules related to administrative proceedings not governed by Section 554 of the Administrative Procedure Act, 40 C.F.R. §§ 22.50 through 22.52.

Based on the following Findings, Complainant finds that Clean Energy Texas LNG, LLC (“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. Respondent is a limited liability company which was incorporated under the laws of the State of Texas, and as such, Respondent is a “person,” as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. At all relevant times, Respondent owned or operated a Liquid Natural Gas (“LNG”) plant which stored liquid natural gas for delivery to the public and private sector consumer base; located at 12114 Longstreet Road, Willis, Montgomery County, Texas (“facility”), and was therefore an “owner or operator” within the meaning of 40 C.F.R. § 122.2.

3. At all relevant times, the facility acted as a “point source” of a “discharge” of “pollutants” with its industrial wastewater to the receiving waters of Lewisville Creek Reservoir, an unclassified water body, thence to Lake Conroe, in Segment 1012 of the San Jacinto River Basin, which is considered a “water 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 that acted as a point source of discharges 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.

6. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point

sources to waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.

7. Respondent applied for and was issued NPDES Permit No. TX0124648 (“permit”) under Section 402 of the Act, 33 U.S.C. § 1342, which became effective on September 1, 2009. At all relevant times, Respondent was authorized to discharge pollutants from the facility to waters of the United States only in compliance with the specific terms and conditions of the permit.

8. Part I.B of the permit requires Respondent to sample and test its effluent and monitor its compliance with permit conditions according to specific procedures, in order to determine the facility’s compliance or non-compliance with the permit and applicable regulations. It also requires Respondent to file with EPA certified Discharge Monitoring Reports (“DMRs”) of the results of monitoring, and Non-Compliance Reports when appropriate.

9. On June 19, 2012, the facility was inspected by an EPA field inspector. During the inspection, Respondent was unable to produce a record of submitted DMRs for reporting quarterly monitoring data, as required by Part I.B of the permit, nor was the Respondent able to produce copies of laboratory analytical data submitted for Fecal Coliform and Whole Effluent Toxicity (“WET”) testing. Respondent has not conducted WET tests or submitted Fecal Coliform analyses, as required by the permit, since September 1, 2009 (the effective date of the permit).

10. The Respondent did produce copies of analytical data and tables summarizing the data collected at each Outfall. Outfall identification on the laboratory analytical reports was inconsistent with the permitted Outfall identifications. Chain-of-Custody documentation was not provided for review at the time of the inspection. Technical review determined that analytical reports for each Outfall were summarized as follows:

| <u>Permitted Outfall ID's</u> | <u>Laboratory Outfall ID's</u> | <u>Parameters</u> |
|---------------------------------|----------------------------------|--|
| Outfall 001 Final Limits | Outfall 103 Combined Effluent | pH, BOD-5, TSS, Flow |
| Outfall 101 Cooling Tower | Outfall 001 Cooling Tower | pH, BOD-5, COD, Oil & Grease, Flow |
| Outfall 103 Treated Sanitary | Outfall 003 STD Effluent | pH, BOD-5, COD, Chlorine, TSS, Flow |

11. A file review conducted on July 9, 2012, confirmed that the Respondent had not submitted quarterly DMRs, as required by Part I.B of the permit, and not submitted WET test or monitoring data for Fecal Coliform, as required by Part I.A of the permit, since the effective date of the permit (September 1, 2009).

12. On July 30, 2012, EPA issued to Respondent Administrative Order Docket Number CWA-06-2012-1857, under the authority of Section 309(a) of the Act, 33 U.S.C. § 1319(a).

The Order required Respondent to:

- a) Within thirty (30) days of the date of the Order, comply with monitoring requirements in Part I.A of the permit by submitting all unreported effluent data for WET Tests and Fecal Coliform using DMR form EPA 3320-1, as specified in Part III.D.4 of the permit. (Respondent has not submitted DMRs or laboratory reports for WET test analysis and Fecal Coliform from September 1, 2009 to August 31, 2012. Furthermore, Respondent confirmed in a telephone conversation with EPA personnel on or about December 7, 2012, that they did not submit DMRs or laboratory data for WET Test and Fecal Coliform analysis for the period of September 1, 2009 to August 31, 2012.)
- b) Within thirty (30) days of the date of the Order, comply with monitoring requirements in Part I.A of the permit by analyzing samples from Outfall 001 for WET Test and Fecal Coliform and reporting the results using DMR form EPA 3320-1, as specified in Part III.D.4 of the permit. (On October 29, 2012, the EPA received analytical data for a sample collected from Outfall 001 on September 19, 2012. The data summarized an analysis for Fecal Coliform and the sample result (404 mpn/m/L) exceeded the permit limit (400mpn/m/L).)

13. Part I.A of the permit places certain limitations on the quality and quantity of effluent discharged by Respondent. The relevant discharge limitations are specified below:

| <u>Effluent Characteristics</u> | <u>Discharge Limitations</u> | | |
|---------------------------------|------------------------------|----------------------------|-------------------------|
| | (lbs./day) 30-day Avg. | Other Units 30-day Avg. | (Specify) Daily Max. |
| Fecal Coliform | N/A | 200 mpn/100m/L | 400 mpn/100m/L |

14. Certified DMRs filed on October 29, 2012, by Respondent in response to the aforementioned Administrative Order reported discharges of pollutants from the facility that exceed the permitted effluent limitations established in Part I.A of the permit, as specified below:

| <u>Date</u> | <u>Outfall</u> | <u>Parameter</u> | <u>Violation</u> | <u>Limit</u> |
|-------------|----------------|------------------|------------------------------|------------------------------|
| 9/12/12 | Outfall 001 | Fecal Coliform | Daily Max. 404 mpn/100m/L | Daily Max. 400 mpn/100m/L |

15. Each instance in which Respondent discharged pollutants to waters of the United States in amounts exceeding the effluent limitations contained in the permit was a violation of the permit and of Section 301 of the Act, 33 U.S.C. § 1311.

16. Under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), Respondent is liable for a civil penalty in an amount not to exceed \$16,000 per day for each day during which a violation continues, up to a maximum of \$177,500.

17. EPA has notified the Texas Commission on Environmental Quality (“TCEQ”) 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).

18. EPA has notified the public of the filing of this Complaint and has afforded the public thirty (30) days in which to comment on the Complaint and 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

19. 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 hereby proposes to assess against Respondent a penalty of eighty-four thousand nine hundred dollars (\$84,900.00).

20. 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 include such factors as the nature, circumstances, extent and gravity of the violations, economic benefits, if any, prior history of such violations, if any, degree of culpability, and such matters as justice may require.

21. 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 Practice 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

22. 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.

23. 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).

24. 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 thirty (30) days after a final Default Order is issued.

25. 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

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

Mr. Russell Murdock (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

26. 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. §§ 22.5 and 22.15, including the name, address, and telephone number of Respondent and/or Respondent's counsel. All other pleadings must be similarly signed and filed.

V. Notice of Opportunity to Request a Hearing

27. 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.

28. 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.

29. 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).

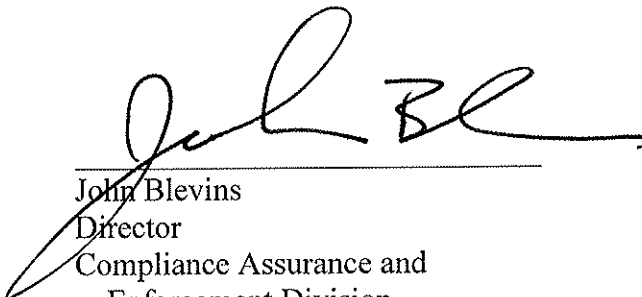
VI. Settlement

30. 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. David Aguinaga, of my staff, at (214) 665-6439.

31. 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.

32. 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.

2.5.13
Date



John Blevins
Director
Compliance Assurance and
Enforcement Division

CERTIFICATE OF SERVICE

I certify that the foregoing Class II 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. Tony Bratton
 LNG Plant Supervisor
 Clean Energy Texas LNG, LLC
 Willis LNG Plant
 12114 Longstreet Road
 Willis, TX 77318

Copy by mail: Ms. Susan Johnson, Manager
 Enforcement Section I (MC 169)
 Texas Commission on Environmental Quality
 P.O. Box 13087
 Austin, TX 78711-3087

Mr. Koby Knight, Manager
Clean Energy Fuels Corporation
Southwest Region Headquarters
8117 Preston Road, Suite 202
Dallas, TX 75225

Program Manager
Environmental Services
Railroad Commission of Texas
P.O. Box 12967
Austin, TX 78701-2967

Copy hand-delivered: Mr. Russell Murdock (6RC-EW)
 U.S. EPA, Region 6
 1445 Ross Avenue, Suite 1200
 Dallas, TX 75202-2733

Dated: FEB 07 2013

 Jackie Allen