

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

FILED

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REGIONAL HEARING CLERK
EPA REGION 6

In the Matter of:

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RCP Production, LLC

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DOCKET NO. CWA-06-2025-1763

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Respondent

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Facility Number: ARU002227

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CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (CAFO) is issued under the authority vested in the United States Environmental Protection Agency (EPA) pursuant to Section 309(g) of the Clean Water Act (the Act), 33 U.S.C. § 1319(g). This CAFO is issued to simultaneously commence and conclude this proceeding to assess a Class I civil penalty in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), as described in the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits.”
2. RCP Production, LLC (Respondent) admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific Findings of Fact and Conclusions of Law contained in this CAFO.
3. The EPA and Respondent (Parties) agree that settlement of the relevant matters without litigation will save time and resources, that it is in the public’s interest, and that the entry of this CAFO is the most appropriate means of resolving such matters. Compliance with all the terms and conditions of this CAFO resolves only those violations alleged herein.

4. Respondent expressly waives any right to contest the factual allegations or conclusions of law contained in this CAFO and in this proceeding and waives its right to appeal the Final Order set forth herein. By signing this consent agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

5. Before the taking of any testimony, and without adjudication of any issue of law or fact, the Parties agree to the terms of this CAFO and to its issuance. Respondent consents to the assessment and payment of a civil penalty in the amount and by the method stated below.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

6. Respondent is a limited liability company incorporated under the laws of the State of Arkansas, 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.

7. At all times relevant to this action (all relevant times), Respondent owned or operated a flowline that was used to transport brine and was the source of the discharge into a relatively permanent tributary of Smackover Creek near Smackover, Union County, Arkansas (facility) and was, therefore, an “owner or operator” within the meaning of 40 C.F.R. § 122.2.

8. At all relevant times, the facility acted as a “point source” of a “discharge” of “pollutants,” specifically oil field brine, to Deer Creek, 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.

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

10. 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. According to the NPDES program, the discharge of oil field brine to “waters of the United States” is a non-permitted discharge.

11. On March 12, 2024, an EPA inspector observed that pollutants, specifically produced water generated from oil production activities, had been discharged from the TD Murphy B-3 SWD Tank Battery secondary containment discharge pipe to an unnamed tributary of Smackover Creek a “water of the United States,” as that term is defined by 40 C.F.R. § 122.2, thence to Smackover Creek, which is considered a “water of the United States.” The inspector determined that the water located at the discharge point of entry into the tributary (Latitude 33.341166 North and Longitude -92.690566 West) was contaminated from produced water discharges and measured 9,256 milligrams per Liter (mg/L) Total Dissolved Solids (TDS).

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

13. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), Respondent is liable for a Class I civil penalty in an amount not to exceed \$27,378 per day for each day during which a violation continued, up to a maximum of \$68,445.

14. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45, EPA (Complainant) will provide public notice of and reasonable opportunity to comment on the proposed issuance of this CAFO prior to issuance of the Final Order.

III. TERMS OF SETTLEMENT

PENALTY PROVISIONS

15. Based on the foregoing Findings of Fact and Conclusions of Law, EPA Region 6, considering the relevant criteria pursuant to Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), and acting pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), hereby orders that Respondent shall pay to the United States a civil penalty in the amount of eleven thousand and two hundred dollars (\$11,200.00) plus interest to settle the violations as alleged in this CAFO, in accordance with 40 C.F.R. § 22.18(c).

16. Respondent agrees to pay a civil penalty in the amount of \$11,200.00 (Assessed Penalty). Based on Respondent's documented inability to pay claim, and in accordance with applicable laws, EPA determined that the Assessed Penalty is an appropriate amount to settle this action, which Respondent consents to pay as follows:

- a. The Assessed Penalty will be paid in 36 equal installments, in order to complete payment of the entire Assessed Penalty and interest, which is assessed at the IRS standard underpayment rate. Including the Assessed Penalty and interest, the total amount that will be paid upon completion of all payments will be \$12,406.68. The first payment is due within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk (Filing Date). Respondent's subsequent payments shall thereafter be due in thirty-day intervals from said Filing Date.

b. Respondent shall make payments in accordance with the following schedule:

Respondent shall make monthly installment payments of \$344.63, which includes principal and interest, for three (3) years, until the total amount paid is \$12,406.68. The first payment shall be made within thirty (30) days after the Filing Date, and subsequent payments shall thereafter be due in thirty-day intervals from said Filing Date.

c. Notwithstanding Respondent's agreement to pay the Assessed Penalty in accordance with the installment schedule set forth above, Respondent may pay the entire Assessed Penalty of \$11,200 within thirty (30) days of the Filing Date and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a). In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance remaining, together with any interest and other charges accrued up to the date of such full payment.

17. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see:

<https://www.epa.gov/financial/additional-instructions-making-payments-epa>. As described on the EPA websites above, payments may be made by the following methods:

a. By mailing a bank check, a cashier's check or certified check, payable to "Treasurer of the United States," to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000

b. By wire transfer to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

c. By mail with signed receipt confirmation (FedEx, DHL, UPS, USPS certified, registered, etc.) to:

U.S. Environmental Protection Agency
Government Lockbox 979078
3180 Rider Trail S.
Earth City, MO 63045

d. By ACH payments to:

U.S. Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Acct. Number: 310006
Environmental Protection Agency
CTX Format Transaction Code 22 – Checking
Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

e. By credit card, debit card, or checking account payments to <https://www.pay.gov>

Follow these steps to make a payment:

1. You do not need a username and password or account.
2. Enter SFO 1.1 in the form search box on the top left side of the screen.
3. Open the form and follow the on-screen instructions.
4. Select type of payment from the "Type of Payment" drop down menu.
5. Based on your selection, the corresponding line will open and no longer be shaded gray.
6. Enter the docket number, invoice number or other corresponding information into the field.

When paying by check, the case name and docket number ("In the Matter of RCP Production, LLC, Docket No. CWA-06-2025-1763") should be clearly marked on the check to ensure credit for payment.

18. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this Agreement,
Docket No. CWA-06-2025-1763,
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve
proof of such payment to the following person(s):

Lorena Vaughn
Regional Hearing Clerk (ORCD)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102
vaughn.lorena@epa.gov

Jeanne Eckhart
Section Supervisor, Energy Sector Compliance Section (ECDWE)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102
eckhart.jeanne@epa.gov

Kristine Talbot
Assistant Regional Counsel, Water Legal Branch (ORCEW)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102
talbot.kristine@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other

information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

19. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C. § 1319(g)(9), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and the EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1319(g)(9). The rate of interest is the IRS standard underpayment rate.
- b. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of collection proceedings.
- c. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.

20. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, the EPA may take additional actions. Such actions the EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14;

- b. Collect the debt by administrative offset (*i.e.*, the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
 - c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, per 40 C.F.R. § 13.17.
 - d. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 33 U.S.C. § 1319(g)(9). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.
21. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.
22. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

IV. GENERAL PROVISIONS

23. The EPA and Respondent agree to the use of electronic signatures for this matter. EPA and Respondent further agree to electronic service of this CAFO by email to the following addresses:

To EPA: henson.tucker@epa.gov and lad.uma@epa.gov
To Respondent: rod_phillips2000@yahoo.com

24. Issuance of this CAFO does not relieve Respondent from responsibility to comply with all requirements of the Act and the requirements of any permits issued thereunder, as described in Section 309(g)(7) of the Act, 33 U.S.C. § 1319(g)(7), nor does it constitute a waiver by the EPA of its right to enforce compliance with the requirements of Respondent's permits or other requirements of the Act by actions pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

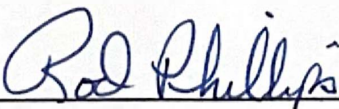
25. The provisions of this CAFO shall be binding upon Respondent, its officers or officials, managers, employees, and their successors or assigns, in their capacity on behalf of Respondent.

26. Each party agrees to bear its own costs and attorneys' fees in this matter, except to the extent that Respondent may be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the terms of this CAFO.

27. Each undersigned representative of the Parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement and to execute and legally bind that party to it.

28. The effective date of this CAFO is the date when the CAFO is filed with the Regional Hearing Clerk.

In recognition and acceptance of the foregoing:



Rod Phillips
RCP Production, LLC

10-02-2025

Date

Bryant Smalley
Chief
Water Enforcement Branch

10/03/2025

Date

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers', agents', servants', employees', successors', or assigns') obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Consent Agreement and Final Order was filed with the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that a true and correct copy was sent on this day in the following manner to the email addresses:

Copy via Email to Complainant – Delivery Receipt Requested

henson.tucker@epa.gov

Copy via Email to Respondent – Delivery Receipt Requested

rod_phillips2000@yahoo.com
Rod Phillips
RCP Production, LLC
134 Daniel Road
Smackover, Arkansas 71762

Dated: _____