

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

FILED
2010 OCT 13 AM 7:56

In the Matter of

§ Docket No. CWA-06-2010-4961 REGIONAL HEARING CLERK
§ REGION VI

Enerco Operating Corp.

§
§
§ Proceeding to Assess a Class I
§ Civil Penalty under Section 309(g)
§ of the Clean Water Act

Respondent

§
§ ADMINISTRATIVE COMPLAINT

Facility No. ARU000067

§

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 ("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 further delegated this authority to the Director of the Compliance Assurance and Enforcement Division of EPA Region 6 ("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 Procedures Act, 40 C.F.R. §§ 22.50-22.52.

Based on the following Findings, Complainant finds that the 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. Enerco Operating Corporation ("Respondent") is a corporation, which was 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 Clean Water Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. At all times relevant, the Respondent owned or operated an oil field production facility, located in the Southeast Quarter of Section 31, Township 16 South, Range 26 West, Miller County, Arkansas ("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 was a "point source" of a "discharge" of "pollutants," specifically oil field brine, to the receiving waters of a tributary of Beech Creek, which is considered a "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 the Respondent owned or operated a facility which acted as a point source of a discharge of pollutants to waters of the United States, the 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. According to the NPDES program, the discharge of oil field brine to "waters of the United States" is a non-permitted discharge.

6. On January 20, 2010, the facility was inspected by an EPA field inspector. The inspector observed that oil field brine had been discharged from the tank battery facility at two different point sources. The inspector observed where brine had been discharged from the first point source, located at Latitude 33° 18.849' North and Longitude 93° 49.600' West, east to a tributary of Beech Creek located directly adjacent to the facility. The inspector also observed where brine had been discharged from the second point source, located at Latitude 33° 18.861' North and Longitude 93° 49.646' West, east to the same tributary of Beech Creek, located at Latitude 33° 18.903' North and Longitude 93° 49.613' West. The inspector determined that the

water located at the first discharge point of entry into the creek measured 2,200 to 4,100 parts-per-million ("ppm") total soluble salts ("TSS") and the water located at the second discharge point of entry into the creek measured 15,000 ppm TSS.

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

8. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), the Respondent is liable for a civil penalty in an amount not to exceed \$16,000 per day for each day during which a violation occurs or continues, up to a maximum of \$37,500.

9. EPA has notified the Arkansas Department of Environmental Quality of the issuance of this Complaint and has afforded the State Agency an opportunity to consult with EPA regarding the assessment of an administrative penalty against the Respondent as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

10. 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

11. 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 the Respondent a civil penalty of ten thousand eight hundred dollars (\$10,800.00).

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

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

IV. Failure to File an Answer

14. If the Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, the Respondent must file an Answer to this Complaint within thirty (30) days after service of this Complaint whether or not the Respondent requests a hearing as discussed below.

15. 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).

16. If the Respondent does not file an Answer to this Complaint within thirty (30) days after service, a Default Order may be issued against the 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 the Respondent without further proceedings thirty (30) days after a Final Default Order is issued.

17. The 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

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

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

19. The Answer must be signed by the Respondent, the Respondent's counsel, or other representative on behalf of the 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 the Respondent and the Respondent's counsel. All other pleadings must be similarly signed and filed.

V. Notice of Opportunity to Request a Hearing

20. The 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. §§ 22.50–22.52.

21. Any request for hearing should be included in the Respondent's Answer to this Complaint; however, as discussed above, the 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.

22. 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).

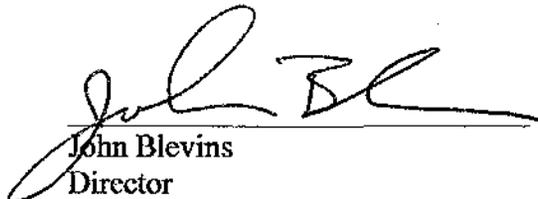
VI. Settlement

23. 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, the Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. The 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.

24. 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 the 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.

25. Neither assessment nor payment of a penalty in resolution of this action will affect the 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.

10/08/10
Date


John Blevins
Director
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. John Myhre, President
Enerco Operating Corporation
P.O. Box 1491
Shreveport, LA 71164

Copy by mail: Mr. Steve Drown
Chief, Water Division
Arkansas Department of Environmental Quality
5301 Northshore Dr.
North Little Rock, AR 72118

Hand-delivered: Mr. Efren Ordoñez (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

OCT 13 2010
Dated: _____

