

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

FILED
2011 FEB 10 PM 3:26
REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of: §
§
Petrohawk Energy Corporation, § DOCKET NO. CWA-06-2010-2706
§
Respondent. §

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 (“Act”), 33 U.S.C. § 1319(g). This CAFO is issued to simultaneously commence and conclude this proceeding to assess a Class II civil penalty in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3), as described in the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits” (Consolidated Rules).

2. EPA and Respondent (the “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.

3. Respondent admits the jurisdictional allegations herein for the purposes of this proceeding; however, Respondent neither admits nor denies the specific Findings of Fact and Conclusions of Law contained in this CAFO for the purposes of this proceeding.

4. This CAFO states a claim(s) upon which relief may be granted.

5. Respondent expressly waives any right to contest, for the purposes of this proceeding, the Findings of Fact or Conclusions of Law contained in this CAFO, and waives its right to appeal the Final Order set forth herein.

6. 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

7. Petrohawk Energy Corporation ("Respondent") is a Delaware corporation qualified to do business in the State of Louisiana ("State"). Respondent's executive offices are located at 1000 Louisiana, Suite 5600, Houston, Texas 77002. 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 and 232.2.

8. The times relevant to the violations alleged herein ("relevant time period") are from approximately October 2008 to October 2009.

9. During the relevant time period, Respondent cleared and filled approximately 93.8 acres of waters of the United States, including wetlands, in connection with construction of forty (40) natural gas wells, located in Bienville, Bossier, Caddo, DeSoto, and Red River Parishes, Louisiana. The construction of the gas wells relevant to the violations alleged herein are described as follows: Bienville Parish: Loe 15 # 1-H; Bossier Parish: Knox Minerals 6 #1; Mack Hogan #4; Ninock 34 H #1; Roos #32 -ALT; Elm Grove Plantation #64; Elm Grove Plantation #66 - ALT; Glasscock et al 34-1; Grayson et al 24- #1H; Grayson et al 25 #1; Hutchinson 27H #1; R. E. Smith, Jr. Trust 5 #3; Sherwin 10 #4-ALT; Tensas-Delta A-H #1; Tullos 17-1; Willis 25 H #1; Willis et al 36 H #1; R.E.Smith, Jr. Trust 32 #1; Caddo Parish: B & K Expt. Investments, LLC 37 #1; Brazzell 24H #1; Crestview Woods 28 #1; Dickson 37-1; Hutchinson 9 #6; DeSoto Parish: Blackstone 6 #3; Dehan et al 15 #1-H; Griffith 11 #1H; Mathews Trust 7 #1H; Meredith et ux 36 #1-H; Peacock Family, LLC 20-1; Red River Parish: Dupree Land 28H #1;

Jacobs 36 #2; Matthews et al 17 #1-H; Matthews et al 18 H #1; Matthews et al 19H #1; Ninock 6 #1-H; Renfro et al 14 #1-H; Sample 4 #1-H; Sample 4 #2-II; Sample 8 #1; Yates 11H #1.

10. During the relevant time period, Respondent discharged, caused the discharge, directed or supervised the discharge, and/or agreed with other persons or business entities, to “discharge dredged material” and/or “discharge fill material,” as defined by 40 C.F.R. § 232.2, from point sources, including heavy equipment, in, on and to approximately 93.8 acres of wetlands, as those terms are defined by Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 232.2. This work was conducted without authorization under a permit issued by the Corps of Engineers (“Corps”).

11. During the relevant time period, the approximately 93.8 acres of wetlands impacted, as described in paragraph 9, *supra*, were “navigable waters” as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 232.2.

12. The discharged dredged material and fill material are considered “pollutants” as that term is defined at Section 502(6) of the Act, 33 U.S.C. § 1362(6).

13. Each piece of equipment used for the discharge(s) acted as a “point source” as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).

14. Under Section 301(a) of the Act, 33 U.S.C. § 1311(a), it is unlawful for any person to discharge a pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, a permit issued under the Act.

15. Under Section 404 of the Act, 33 U.S.C. § 1344, the Secretary of the Army, acting through the Chief of Engineers for the Corps, is authorized to issue permits for the discharge of dredged or fill material into navigable waters of the United States.

16. During the relevant time period, Respondent did not have a permit issued by the Corps authorizing the discharges alleged herein.

17. The discharges described and alleged in this CAFO associated with three of the well sites and totaling approximately 14.8 acres were discovered by the Corps. The alleged discharges associated with one additional well site and totaling 4.8 acres were discovered by the Respondent and voluntarily disclosed to the Corps. The remaining discharges alleged in this CAFO associated with the construction of 36 well sites and totaling approximately 74.2 acres were discovered by Respondent as a result of a voluntary comprehensive audit of Respondent's construction activities. Respondent voluntarily disclosed the results of the audit to the Corps and EPA.

18. Under Section 309(g)(1)(A) of the Act, 33 U.S.C. § 1319(g)(1)(A), the Administrator is authorized to assess a Class II civil penalty whenever, on the basis of any available information, the Administrator finds that a person violated Section 301 of the Act, 33 U.S.C. § 1311.

19. Under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, Respondent is liable for a civil penalty of up to \$11,000 per day for each day that the violation continues, up to a maximum of \$157,500, for violations that occurred after March 15, 2004, to January 12, 2009, and up to \$16,000 per day for each day that the violation continues, up to a maximum of \$177,500, for violations that occurred after January 12, 2009.

20. EPA notified the State and provided the State an opportunity to consult with EPA regarding the proposed assessment of an administrative penalty against Respondent.

21. On November 24, 2010, EPA notified the public of the proposed CAFO through public notices in the Baton Rouge Advocate, Shreveport Times, Arkansas Democrat-Gazette,

and New Orleans Picayune Newspapers, and afforded the public forty (40) days to comment on the proposed penalty in accordance with 40 C.F.R. § 22.45. At the expiration of the notice period, EPA had not received comments from the public.

III. TERMS OF SETTLEMENT

A. PENALTY PROVISIONS

22. 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 one hundred seventy seven thousand five hundred dollars (\$177,500.00), to settle the violations as alleged in this CAFO, in accordance with 40 C.F.R. § 22.18(c).

23. Payment shall be made by one of the following methods within thirty (30) days of the effective date of this CAFO:

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

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

- b. By wire transfer to:

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"

c. By overnight mail (Express, FedEx, DHL, etc.) to:

U.S. Bank
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone: 314-418-4087

d. By credit card payments to <https://www.pay.gov/paygov/>
(enter 'sfo 1.1' in the search field)

When paying by check, the case name and docket number (In the Matter of Petrohawk Energy Corporation, Docket No. CWA-06-2010-2706) should be clearly marked on the check to ensure credit for payment.

24. Respondent shall send simultaneous notice of payment, including a copy of the check or other proof of payment, to each of the following:

- (a) Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
- (b) Jeanene Peckham
Wetlands Section (6WQ-EM)
Water Quality Protection Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
- (c) Agustin F. Carbo
Office of Regional Counsel (6RC-M)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent's adherence to these procedures will ensure proper credit when payment is received by EPA.

25. Respondent agrees not to claim, or attempt to claim, a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

26. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

27. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

28. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States' enforcement expenses, including but not limited to, attorney's fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be twenty (20) percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

29. Failure by Respondent to pay the penalty assessed according to the terms of this CAFO, in full, by its due date, may subject Respondent to a civil action to collect the assessed penalty and any accrued interest and penalties.

30. In the event a collection action is necessary, Respondent shall pay - in addition to any applicable penalty, fees, and interest described herein - all reasonable costs and expenses, including legal expenses and court costs, incurred by the United States for enforcement and collection proceedings for nonpayment of the amounts agreed hereunder, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. 1319(g)(9). In any such collection action, the validity, amount, and appropriateness of the penalty, and the terms of this CAFO, shall not be subject to review.

B. GENERAL PROVISIONS

31. This CAFO shall become effective upon filing with EPA's Regional Hearing Clerk.

32. 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 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.

33. 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.

34. Each party agrees to bear its own costs and attorney's 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. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act, 5 U.S.C. § 504, as amended by the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. § 601, and any regulations promulgated pursuant to those Acts.

35. 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.

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT
AGREEMENT AND FINAL ORDER**

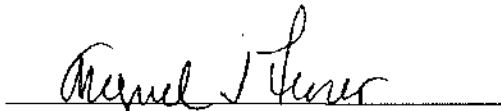
FOR RESPONDENT:



H. Weldon Holcombe
Executive Vice President

1-24-2011
Date

FOR COMPLAINANT:



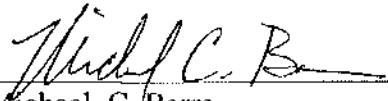
Miguel I. Flores
Director
Water Quality Protection Division

2-10-2011
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. This CAFO shall become effective upon filing with the Regional Hearing Clerk, pursuant to 40 C.F.R. § 22.31(b).

Issuance Date: February 10, 2011



Michael C. Barra
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 5 day of February, 2011, the original of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA, Region 6 (6RC-D), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was delivered to the following by the method indicated:

U.S. POSTAL SERVICE CERTIFIED MAIL:

Mr. H. Weldon Holcombe
Petrohawk Energy Corporation
6100 South Yale, Suite 500
Tulsa, Oklahoma 74136

U.S. POSTAL SERVICE FIRST-CLASS MAIL:

U.S. EPA
Cincinnati Finance Center MS 002
Attention: Michelle Angel
26 West MLK Dr.
Cincinnati, OH 45268-0001

James C. Morriss III, Esq.
Thompson & Knight LLP
98 San Jacinto Blvd., Ste. 1900
Austin, TX 78701-4238

HAND DELIVERED:

Mrs. Jeanene Peckham
Water Quality Protection Division (6WQ-EM)

Mr. Agustin F. Carbo-Lugo (6RC-M)
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA Region 6, 1445 Ross Avenue
Dallas, TX 75202-2733

