

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

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REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of § Docket No. CWA-06-2018-1831
Diamond 3S, LLC §
Respondent §
Facility No.: OKU000867 § Motion for Default

I. Motion for Default

Comes now the Director of the Enforcement and Compliance Assurance Division of the, United States Environmental Protection Agency (EPA), Region 6 (“Complainant”), by and through its attorney, in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” (“Rules of Practice”) 40 C.F.R. Part 22, 40 C.F.R. §§ 22.1 through 22.52, hereby moves the Court to enter a Default Order against the Respondent pursuant to 40 C.F.R. §22.17, granting judgment in favor of Complainant as to all parts of the proceeding. In addition to seeking liability for violations of the Clean Water Act (“CWA”), the Complainant is seeking civil penalties in the amount of \$64,500. In support thereof, Complainant brings forth the below information.

II. Procedural Background

1. **Governing Procedures.** This proceeding is governed by the “Rules of Practice”, 40 C.F.R. § 22.1 et seq. In accordance with 40 C.F.R. § 22.51, Complainant’s Motion for Default shall be ruled upon by the Presiding Officer, or Regional Judicial Officer (“Presiding Officer”).

2. **Filing of the Complaint.** In accordance with 40 C.F.R. §§ 22.5(a) and 22.14, the original Administrative Complaint and one copy was filed with, and received by, the Regional Hearing Clerk, EPA Region 6, on September 28, 2018. *See* Exhibit 1.

3. **Service of the Complaint.** According to the “green card” return receipt, Respondent received the Complaint on October 9, 2019. *See* Exhibit 2 (Return Receipt, Article No. 70140150000024059585). As of the date of this filing, Respondent has not filed an Answer to the Complaint or a Request for Hearing in this matter, nor has Respondent attempted to admit, deny or explain any factual allegation contained in the Complaint.

4. **Answer to Complaint.** A party may be found to be in default upon failure to file a timely answer to a Complaint, 40 C.F.R. § 22.17(a). An answer must be filed with the Regional Hearing Clerk, EPA Region 6, within thirty (30) days after service of a Complaint and shall admit, deny or explain each factual allegation contained in the Complaint, 40 C.F.R. § 22.15(a), (b). Failure of a respondent to admit, deny or explain any material factual allegation constitutes an admission of the allegation, 40 C.F.R. § 22.15(d).

5. **Request for Extension.** In accordance with 40 C.F.R. § 22.7(b), a party may request from the Presiding Officer an extension of time for filing any document. On December 21, 2018 the Respondent filed an unopposed Motion for an extension of time to answer the Complaint. An extension of time to file a response to the Complaint was granted until April 1, 2019 on January 31, 2019. *See* Exhibit 3. To date, the Respondent has failed to file an Answer to the Complaint filed September 28, 2018.

II. Statutory and Regulatory Authority

6. This is a proceeding to assess a Class II Civil Penalty under Section 309(g) of the CWA, 33 U.S.C. § 1319(g) and is governed by Subpart I of the Rules of Practice, 40 C.F.R. §§ 22.50 through 22.52. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator of EPA to issue an administrative Complaint for violations of the Clean Water Act (“CWA”). The Administrator of EPA delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who delegated this authority to the “Complainant”.

7. **Prima Facie Case – Liability.** For a Default Order to be entered against the Respondent, the Presiding Officer must conclude the Complainant has established a prima facie case of liability against the Respondent. *See In re Atkinson*, 1998 WS 422231, Docket No. RCRA-9006-VIII-97-02 (PA Region VIII). Under 40 C.F.R. § 22.17(a), to establish a prima facie case, the Complainant must establish by a preponderance of the evidence that each element of the violation has occurred. *See In re Haydel*, 2000 WL 436240, Docket No. CWA-VI-99-1618 (EPA Region VI). As per the factual allegations outlined in the Complaint (*See Exhibit 1, Complaint No. CWA-06-2018-1831*), the Respondent violated Section 301, 33 U.S.C. § 1311. Complainant filed the administrative Complaint in this matter on September 28, 2018, the contents of which are incorporated herein by reference. Specifically, the following elements of the Complainant’s cause of action have been met:

A. Respondent is a domestic limited liability company incorporated under the laws of the State of Oklahoma, and as such, Respondent is a “person,” as that term is defined at Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2. As of August 21, 2019, the Oklahoma Secretary of State lists Respondent’s status as “in existence” under

the “Business Entities Search All,” (link: <https://www.sos.ok.gov/corp/corpInquiryFind.aspx>, search “Diamond 3S, LLC”) and Respondent’s Registered Agent is listed as Diamond 3S, LLC, 20102 West Coyote Trail, Sand Springs, Oklahoma, 74063. *See* Exhibit 4.

B. At all times relevant to this action (“all relevant times”), Respondent owned or operated an oil field disposal and production facility known as the Kennedy Lease, located in Pawhuska, Osage County, Oklahoma (“facility”) and was, therefore, an “owner or operator” within the meaning of 40 C.F.R. § 122.2. This facility is identified by EPA Facility Number OKU000867 and is located at Latitude 36.586969 North and Longitude - 96.498093 West in the Northeast Quarter of Section 1, Township 24 North, and Range 7 East.

C. At all relevant times, the facility acted as a “point source” of a “discharge” of “pollutants,” specifically oil field brine or produced water, to the tributary of Daniel’s Run Creek, which is considered a “water of the United States” within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

D. 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 facility were subject to the CWA and the National Pollutant Discharge Elimination System (“NPDES”) program.

E. Under Section 301 of the CWA, 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 CWA, 33 U.S.C. § 1342. According to the NPDES program, the

discharge of oil field brine and produced water to “waters of the United States” is a non-permitted discharge.

8. **Affidavit Attached for Violations Observed.** Attached to this Motion for Default is the Affidavit of Kent Sanborn. This declaration outlines in detail how the Complainant determined that each element of the violation occurred. Pursuant to 40 C.F.R. §§ 22.5(a) and 22.17(b), the Complainant respectfully requests the Presiding Officer to admit into evidence, the attached Affidavit of Kent Sanborn, as evidence to support the Complainant’s established preponderance of evidence. *See Exhibit 5.*

9. **Complaint Allegations.** The Complaint alleged that Respondent discharged oil field wastes and produced water generated from oil production activities into a “water of the United States,” as that term is defined by 40 C.F.R. § 122.2. On March 16, 2018, March 20, 2018, April 12, 2018, and April 26, 2018, pollutants were discharged to the tributary of Daniel’s Run Creek, which is considered a “water of the United States” from the facility, in violation of Section 301 of the CWA, 33 U.S.C. § 1311. *See Exhibit 1 (Complaint, No. 1–10).* The Complaint proposed to assess a penalty of sixty-four thousand and five hundred dollars (\$64,500.00). *See Exhibit 1 (Complaint, No. 14–16).* The Complaint described Respondent’s right to file an Answer or a Request for Hearing, as well as noted that a Default Order may be sought if Respondent fails to file an Answer. *See Exhibit 1 (Complaint, No. 25–28).*

10. **Correspondence with Respondent.** Complainant had four (4) informal settlement meetings with the Respondent via the phone on November 3, 2018, December 10, 2018, February 5, 2019, and September 23, 2019. Complainant has also had numerous phone calls, left voicemails, and successfully sent emails requesting information and responses to continue the informal settlement discussions. During the informal settlement meeting on September 23, 2019, the

Complainant discussed the continuing failure to comply with the CWA and indicated the upcoming Motion for Default. Complainant has exhausted all available options to reach a Settlement with Respondent regarding this matter in order to avoid seeking a Default Order. *See* Exhibit 6.

11. **Notice of Intent to file Motion for Default with Respondent.** On September 5, 2019, Complainant sent Respondent a “Notice of Intent letter” notifying Respondent of its intent to file a Motion for Default in this matter unless Respondent filed an Answer to the Complaint within ten days of receipt. *See* Exhibit 7 (Letter from Rusty Herbert, EPA, to Mr. Ryan Summers, Diamond 3S, LLC (“Notice of Intent Letter”). In the Notice of Intent letter, Complainant noted that any Motion for Default would seek full resolution of the proceeding and assessment of the full penalty sought in the Complaint.

12. **Service of Notice of Intent.** According to the “green card” return receipt, Respondent received the Notice of Intent letter on September 10, 2019. *See* Exhibit 8 (Return Receipt, Article No. 7005 1820 0003 7456 0015). As of the date of this filing, Respondent has neither filed an Answer to the Complaint nor contacted Complainant in response to the Notice of Intent letter.

13. **Respondent’s Admission of Facts Alleged.** As per 40 C.F.R. §§ 22.15(d) and 22.17(a), failure of the Respondent to admit, deny or explain any material factual allegation contained in the Complaint constitutes an admission of each factual allegation and a waiver of the Respondent’s right to contest such factual allegations. As stated above, to date, the Respondent has not filed an Answer to the Complaint filed on September 28, 2018. Thus, the Respondent has, by default, admitted all the facts alleged in the Complaint. *See In re Palimere, et al*, 2000 WL 33126605, Docket No. RCRA-III-9006-050 (EPA Region III). (Respondent’s default constitutes

an admission of facts alleged, therefore, the Complainant need not submit evidence to prove a prima facie case on liability for a default order).

14. **Finding of Respondent Liability.** Subsequently, under 40 C.F.R. § 22.16(c), the Complainant requests the Presiding Officer issue a Default Order against the Respondent, Diamond 3S, LLC, finding the Respondent liable for violations of the CWA as previously stated.

15. **Current Status of Facility.** On July 18, 2019, EPA inspected the facility and documented the continued violations of the CWA, including pollutants reaching a “water of the U.S.” with out an NPDES permit. The inspection documented elevated levels of Total Dissolved Solids (TDS) in the tributary of Daniel’s Run Creek and dead aquatic life. The facility continues to not be in compliance with the CWA. *See Exhibit 9.*

IV. Penalty Assessment

16. **Civil Penalty.** In addition to liability, the Complainant is seeking assessment of a civil penalty in the amount of \$64,500 for violation of 301 of the CWA, 33 U.S.C. § 1311.

17. **Prima Facie Case – Civil Penalty.** Under 40 C.F.R. §§ 22.17(c) and 22.27(c), a Default Order functions as an Initial Decision and becomes a Final Order 45 days after its service. As per 40 C.F.R. § 22.24, the Complainant bears the burden of proof for justifying its calculations of penalties. Pursuant to Section 309(g)(3), 33 U.S.C. § 1319(g)(3), the Complainant considered the following factors in determining the amount of penalty:

- A. The nature, circumstances, extent and gravity of the violation or violations,
- B. Violator’s ability to pay,
- C. Prior history of violations,
- D. Degree of culpability,

- E. Economic benefit,
- F. Such other matters as justice may require.

18. **Affidavit Attached for Penalty Calculation.** Attached to this Default Motion is the Affidavit of Jeanne Eckhart (Enforcement Officer). This declaration outlines in detail how the Complainant calculated the civil penalty using each of the statutory factors listed above. Pursuant to 40 C.F.R. §§ 22.5(a) and 22.17(b), the Complainant respectfully requests the Presiding Officer to admit into evidence, the attached Affidavit of Jeanne Eckhart, as evidence to support the Complainant's penalty amount. *See Exhibit 10.*

19. **Inability to Pay.** The Respondent has indicated an inability to pay the fine. The Complainant requested initial documentation to run a preliminary assessment of the claim of inability to pay by the Respondent. The documentation the Respondent provided was their tax returns from the following years: 2015, 2016, and 2017. The tax returns were analyzed using the ABEL software as EPA policy and guidance indicates, to run a preliminary ability to pay analysis.

A. ABEL outputted the following: ABEL estimates a 90% probability that Diamond 3S, LLC can currently afford a \$64,500 penalty after meeting total Pollution Control Expenditures of \$26, 323.

B. ABEL estimates a 70% probability that Diamond 3S, LLC could afford to pay a penalty of \$235,430 after meeting total Pollution Control Expenditures of \$26,323. This is based only on cash flow the firm is projected to generate in the next 5 years. Additional ability to pay could follow from an examination of unnecessary expenses, assets unrelated to business operations, and/or other sources

C. EPA typically employs the 70% probability level for determining ability to pay and the litigation team will determine the appropriateness of the assessment and if there

if further need to apply resources to run further analyses. The EPA case team did not pursue further analysis after the preliminary analysis was run for this claim from the Respondent.

D. For the payment schedule (which does not affect the ability to pay), 3 yearly payments (at a 6.9% interest rate) of \$22,949.43 are the equivalent of the lump-sum affordable amount.

From ABEL's outputs above, the financial analysis model estimates a 90% probability that the Respondent can afford to pay the \$64,500 penalty. *See* Exhibit 11. Therefore, EPA do not choose to use this factor to reduce the penalty.

19. **Assessment of Civil Penalty.** Under the facts outlined above and pursuant to 40 C.F.R. § 22.27(b), the Complainant requests the Presiding Officer approve assessment of a civil penalty in the amount of \$64,500 against the Respondent for violations of the CWA.

V. Legal Authority

20. A Motion for Default may seek resolution of all or part of the proceeding, 40 C.F.R. § 22.17(a). When the Presiding Officer finds that default has occurred, he shall issue a Default Order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why default shall not be issued, 40 C.F.R. § 22.17(c). The relief proposed in the Complaint or the Motion for Default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the statute authorizing the proceeding at issue. *Id.*

V. Motion for Default

21. Pursuant to 40 C.F.R. § 22.17, Complainant moves the Presiding Officer to enter a Default Order that resolves this matter in full and assesses the full penalty sought in the Complaint. Pursuant to 40 C.F.R. § 22.17(d), any penalty assessed shall become due and payable by Respondent without further proceedings forty-five (45) days after the Default Order becomes final.

DATED this 18 day of DECEMBER, 2019.

Respectfully Submitted,

Scott P. McDonald for

Mr. Rusty Herbert (ORCEW)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102
Tel.:(281) 983-2218

CERTIFICATE OF SERVICE

I certify that the foregoing Motion for Default was sent to the following persons, in the manner specified, on the date below:

Original hand-delivered: Regional Hearing Clerk (ORC)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102

Copy by certified mail,
return receipt requested: Mr. Ryan Summers, Owner
Diamond 3S, LLC
20102 West Coyote Trail
Sand Springs, Oklahoma 74063

Copy by mail: Ms. Robin Phillips, Superintendent
Osage Agency, Bureau of Indian Affairs
P.O. Box 1539
Pawhuska, Oklahoma 74056

Ms. Jann Hayman, Environmental Director
Osage Nation, ENR Department
100 West Main Street, Suite 304
Pawhuska, OK 74056

Copy hand-delivered: Mr. Rusty Herbert (ORCEW)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102

Dated: _____

1/9/2020

A handwritten signature in black ink, appearing to be "J. Herbert", written over a horizontal line.

Exhibit 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

SEP 28 2018

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7014 0150 0000 2405 9585

Mr. Joel Summers, Owner
Diamond 3S, LLC
20102 West Coyote Trail
Sand Springs, Oklahoma 74063

Re: Notice of Proposed Assessment of Class II Civil Penalty
Docket Number: CWA-06-2018-1831
Facility Number: OKU000867

Dear Mr. Summers:

Enclosed is an Administrative Complaint (Complaint) issued to Diamond 3S, LLC, for violation of Section 301(a) of the Clean Water Act (CWA). The violation was identified during inspections that occurred on March 16, 2018, March 20, 2018, April 12, 2018, and April 26, 2018 conducted by the Environmental Protection Agency (EPA). The inspection was conducted at your oil field disposal and production facility known as the Kennedy Lease located in Pawhuska, Osage County, Oklahoma. The violation alleged is for the unauthorized discharge of pollutants, specifically oil field brine and produced water, to a water of the United States. Administrative Order, Docket Number CWA-06-2018-1789, was issued to Respondent on April 11, 2018 addressing this same violation.

You have the right to request a hearing regarding the violation alleged in the Complaint and the proposed administrative civil penalty. For information regarding hearing and settlement procedures, please refer to Part 22, "Consolidated Rules of Practice," which can be found at <https://www.epa.gov/enforcement/consolidated-rules-practice-40-cfr-part-22-administrative-assessment-civil-penalties>. Please pay particular attention to Section V of the Complaint entitled "Notice of Opportunity to Request a Hearing." Note that should you fail to request a hearing within thirty (30) days of receipt of the Complaint, you will waive your right to such a hearing, and the proposed civil penalty of \$64,500.00 may be assessed against you without further proceedings. You have the right to be represented by an attorney or to represent yourself at any stage of these proceedings.

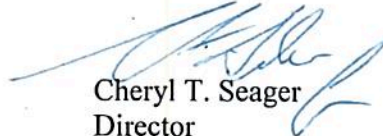
Whether or not you request a hearing, we invite you to confer informally with EPA concerning the alleged violation and the amount of the proposed penalty. You may represent Diamond 3S, LLC, or be represented by an attorney at any conference, whether in person or by telephone. EPA encourages all parties against whom it files a Complaint proposing assessment of a penalty to pursue the possibility of settlement as a result of an informal conference.

Re: Administrative Complaint
Diamond 3S, LLC

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EPA is committed to ensuring compliance with the requirements of the CWA and the National Pollutant Discharge Elimination System program and my staff will assist you in any way possible. If you have any questions, or wish to discuss the possibility of a settlement of this matter, please contact Jeanne Eckhart, of my staff, at (214) 665-8174.

Sincerely,



Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division

Enclosure

cc: Ms. Robin Phillips, Superintendent
Osage Agency, Bureau of Indian Affairs
P.O. Box 1539
Pawhuska, Oklahoma 74056

Ms. Jann Jones, Environmental Director
Osage Nation, ENR Department
100 West Main Street, Suite 304
Pawhuska, Oklahoma 74056



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

SEP 28 2018

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7014 0150 0000 2405 9592

Ms. Jann Jones, Environmental Director
Osage Nation, ENR Department
100 West Main Street, Suite 304
Pawhuska, Oklahoma 74056

Re: Notice of Proposed Administrative Class II Civil Penalty Assessment
Docket Number: CWA-06-2018-1831
Facility Number: OKU000867

Dear Ms. Jones:

Enclosed is a copy of the Administrative Complaint (Complaint) which the Environmental Protection Agency (EPA) is issuing to Diamond 3S, LLC (Respondent), pursuant to Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g). EPA is issuing the Complaint to administratively assess a Class II civil penalty of \$64,500.00 against Respondent for violation of the CWA. Because the violation occurred in Pawhuska, Osage County, Oklahoma, I am offering you an opportunity to confer with us regarding the proposed penalty assessment.

You may request a conference within two weeks of receipt of this letter. The conference may be in person or by telephone and may cover any matters relevant to the proposed penalty assessment. If you wish to request a conference, or if you have any comments or questions regarding the matter, please contact Jeanne Eckhart, of my staff, at (214) 665-8174.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cheryl T. Seager", is positioned above the typed name.

Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

SEP 28 2018

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7014 0150 0000 2405 9608

Ms. Robin Phillips, Superintendent
Osage Agency, Bureau of Indian Affairs
P.O. Box 1539
Pawhuska, Oklahoma 74056

Re: Notice of Proposed Administrative Class II Civil Penalty Assessment
Docket Number: CWA-06-2018-1831
Facility Number: OKU000867

Dear Ms. Phillips:

Enclosed is a copy of the Administrative Complaint (Complaint) which the Environmental Protection Agency (EPA) is issuing to Diamond 3S, LLC (Respondent), pursuant to Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g). EPA is issuing the Complaint to administratively assess a Class II civil penalty of \$64,500.00 against Respondent for violation of the CWA. Because the violation occurred in Pawhuska, Osage County, Oklahoma, I am offering you an opportunity to confer with us regarding the proposed penalty assessment.

You may request a conference within two weeks of receipt of this letter. The conference may be in person or by telephone and may cover any matters relevant to the proposed penalty assessment. If you wish to request a conference, or if you have any comments or questions regarding the matter, please contact Jeanne Eckhart, of my staff, at (214) 665-8174.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cheryl T. Seager".

Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

FILED
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REGIONAL HEADQUARTERS
EPA REGION VI

In the Matter of: § Docket No. CWA-06-2018-1831
§
Diamond 3S, LLC § Proceeding to Assess a Class II
§ Civil Penalty under Section 309(g)
§ of the Clean Water Act
Respondent §
§
Facility Number: OKU000867 § Administrative Complaint

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 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, 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,” 40 C.F.R. Part 22, 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 Diamond 3S, LLC (“Respondent”) 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 corporation incorporated under the laws of the State of Oklahoma, 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 times relevant to this action (“all relevant times”), Respondent owned or operated an oil field disposal and production facility known as the Kennedy Lease, located in Pawhuska, Osage County, Oklahoma (“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,” specifically oil field brine, to the tributary of Daniel’s Run 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.

4. 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 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 March 16, 2018, an EPA inspector observed that pollutants, specifically oil field wastes and produced water generated from oil production activities, had been discharged from the facility to “waters of the United States,” as that term is defined by 40 C.F.R. § 122.2. Pollutants were discharged to the tributary of Daniel’s Run 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 of Daniel’s Run Creek (Latitude 36.586494 N and Longitude -96.499100 W) was contaminated from produced water discharges and measured 95,541 milligrams per Liter (“mg/L”) Total Dissolved Solids (“TDS”).

7. On March 20, 2018, an EPA inspector observed that pollutants, specifically oil field wastes and produced water generated from oil production activities, had been discharged from the

facility to “waters of the United States,” as that term is defined by 40 C.F.R. § 122.2. Pollutants were discharged to the tributary of Daniel’s Run 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 of Daniel’s Run Creek (Latitude 36.586494 N and Longitude -96.499100 W) was contaminated from produced water discharges and measured 77,765 mg/L TDS.

8. On April 12, 2018, an EPA inspector observed that pollutants, specifically oil field wastes and produced water generated from oil production activities, had been discharged from the facility to “waters of the United States,” as that term is defined by 40 C.F.R. § 122.2. Pollutants were discharged to the tributary of Daniel’s Run 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 of Daniel’s Run Creek (Latitude 36.5866514 N and Longitude -96.499076 W) was contaminated from produced water discharges and measured 83,783 mg/L TDS.

9. On April 26, 2018, an EPA inspector observed that pollutants, specifically oil field wastes and produced water generated from oil production activities, had been discharged from the facility to “waters of the United States,” as that term is defined by 40 C.F.R. § 122.2. Pollutants were discharged to the tributary of Daniel’s Run 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 of Daniel’s Run Creek (Latitude 36.5866514 N and Longitude -96.499076 W) was contaminated from produced water discharges and measured 43,810 mg/L TDS.

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

11. Under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), as modified by 40 C.F.R. Part 19, Respondent is liable for a civil penalty in an amount not to exceed \$21,393.00 per day for each day during which a violation occurs or continues, up to a maximum of \$267,415.

12. EPA has notified the Bureau of Indian Affairs of the issuance of this Complaint and has afforded the agency 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).

13. 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. The public notification can be found at: <https://www.epa.gov/publicnotices>.

III. Proposed Penalty

14. 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 civil penalty of sixty-four thousand and five hundred dollars (\$64,500.00).

15. 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 violations, economic benefits, if any, prior history of such violations, if any, degree of culpability, and such matters as justice may require.

16. 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 Procedure Act.

IV. Failure to File an Answer

17. 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.

18. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15 (found at: <https://www.epa.gov/enforcement/consolidated-rules-practice-40-cfr-part-22-administrative-assessment-civil-penalties>). 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).

19. If Respondent does not file an Answer to this Complaint within thirty (30) days after service, 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.

20. Respondent must send its Answer to this Complaint, including any request for a 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

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

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

22. 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 Respondent's counsel. All other pleadings must be similarly signed and filed.

V. Notice of Opportunity to Request a Hearing

23. 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.

24. 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.

25. 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

26. 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 Jeanne Eckhart, of my staff, at (214) 665-8174.

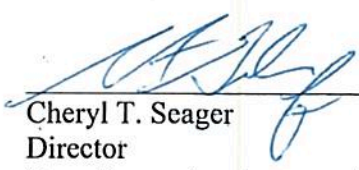
27. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. § 22.18(b). The issuance of

a CAFO would waive Respondent's right to a hearing on any matter stipulated 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.

28. 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.

SEP 28 2018

Date


Cheryl T. Seager
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. Joel Summers, Owner
Diamond 3S, LLC
20102 West Coyote Trail
Sand Springs, OK 74063

Copy by mail: Ms. Robin Phillips, Superintendent
Osage Agency, Bureau of Indian Affairs
P.O. Box 1539
Pawhuska, OK 74056

Ms. Jann Jones, Environmental Director
Osage Nation, ENR Department
100 West Main Street, Suite 304
Pawhuska, OK 74056

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

Dated: Sept. 28, 2018

Ellen Chang-Vaughan

Exhibit 2

Track Another Package +

Tracking Number: 70140150000024059585

Remove X

Your item was delivered at 8:50 am on October 9, 2018 in SAND SPRINGS, OK 74063.

Delivered

October 9, 2018 at 8:50 am
Delivered
SAND SPRINGS, OK 74063

Feedback

Tracking History



October 9, 2018, 8:50 am

Delivered

SAND SPRINGS, OK 74063

Your item was delivered at 8:50 am on October 9, 2018 in SAND SPRINGS, OK 74063.

October 4, 2018, 3:20 pm

Notice Left (No Authorized Recipient Available)

SAND SPRINGS, OK 74063

October 4, 2018, 3:30 am

Departed USPS Regional Facility

TULSA OK DISTRIBUTION CENTER

October 3, 2018, 3:38 pm

Arrived at USPS Regional Facility

TULSA OK DISTRIBUTION CENTER

October 3, 2018, 12:55 am
Arrived at USPS Regional Facility
COPPELL TX DISTRIBUTION CENTER

Product Information



Postal Product:

Features:
Certified Mail™

See Less ^

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs (<https://www.usps.com/faqs/uspstracking-faqs.htm>)

Feedback

The easiest tracking number is the one you don't have to know.

With Informed Delivery[®], you never have to type in another tracking number. Sign up to:

- See images* of incoming mail.
- Automatically track the packages you're expecting.
- Set up email and text alerts so you don't need to enter tracking numbers.
- Enter USPS Delivery Instructions[™] for your mail carrier.

Sign Up

([https://reg.usps.com/entreg/RegistrationAction_input?](https://reg.usps.com/entreg/RegistrationAction_input?app=UspsTools&appURL=https%3A%2F%2Ftools.usps.com%2Fgc)

***NOTE: Black and white (grayscale) images show the outside, front of letter-sized envelopes and mailpieces that are processed through USPS's automated equipment.**

Exhibit 3

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2019 JAN-30 PM 2:57
REGIONAL JUDICIAL OFFICE
EPA REGION VI

IN THE MATTER OF:

Diamond 3S, LLC

Respondent

)
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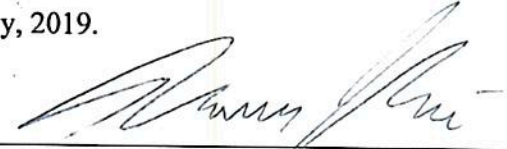
Docket No. CWA-06-2018-1831

WHEREAS, on September 28, 2018, Complainant, United States Environmental Protection Agency, Region 6 ("EPA"), filed a Complaint against Respondent alleging violations of the Clean Water Act. On December 21, 2018, Respondent filed an unopposed Motion for an extension of time to answer the Complaint.

Due to the recent appropriations lapse and subsequent furlough impacting EPA, filings submitted during or right before such time were delayed in receiving due attention. As such, I will address the Motion as if it was timely filed, but grant the extension for 60 days from the date noted herein to allow the parties sufficient time to resolve this matter.

It is therefore ORDERED that the Motion be, and hereby is, GRANTED until April 1, 2019.

Dated this 31st day of January, 2019.



Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I, Lorena S. Vaughn, the Regional Hearing Clerk for the Region 6 office of the Environmental Protection Agency, hereby certify that a TRUE AND CORRECT copy of the document was served upon the parties on the date and in the manner set forth below:

Ryan P. Summers
Diamond 3S, LLC
20102 West Coyote Trail
Sand Springs, OK 74063

U.S. FIRST CLASS MAIL -
RETURN RECEIPT REQUESTED

Rusty Herbert
Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202

INTEROFFICE MAIL

DATE: 1/31/19

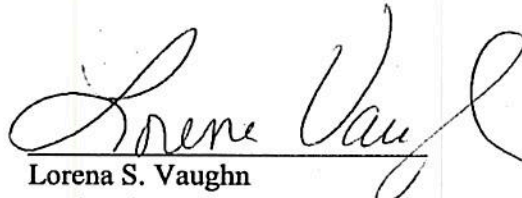

Lorena S. Vaughn
Regional Hearing Clerk

Exhibit 4

Entity Summary Information

Select the buttons below to file or place an order.

To view Entity Details there will be a \$5.00 charge and you will need to click on **VIEW ENTITY DETAILS** button at the bottom of the page.

If you are ordering documents such as a "Certificate of Good Standing" or "copies" you will need to click on the **ORDER DOCUMENTS** button at the bottom of the page.

If you are filing a legal document such as a trade name, amendment, annual certificate, etc., you will need to click on **FILE A DOCUMENT** button at the bottom of the page.

DIAMOND 3S, LLC

Details

Filing Number:	3512404249
Name Type:	Legal Name
Status:	In Existence 
Corp type:	Domestic Limited Liability Company
Jurisdiction:	Oklahoma
Formation Date:	10 May 2013

Registered Agent Information

Name:	DIAMOND 3S, LLC
Effective:	10 May 2013
Address:	20102 WEST COYOTE TRAIL
City, State , ZipCode:	SAND SPRINGS OK 74063

[View Entity Detail](#)[File a Document](#)[Order Documents](#)[New Search](#)

Exhibit 5

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of § Docket No. CWA-06-2018-1831
 §
Diamond 3S, LLC §
 §
 §
Respondent §
 §
Facility No.: OKU000867 § Affidavit

19 DEC 17 AM 9:30
EPA REGION 6 OFFICE
DALLAS, TX

AFFIDAVIT OF KENT SANBORN

I, KENT SANBORN, make the following statement truthfully from personal knowledge, under penalty of perjury, in accord with 28 U.S.C. § 1746.

1. I make this statement in my capacity as an Environmental Engineer employed in the Energy Sector Compliance Section of the Enforcement and Compliance Assistance Division of the United States Environmental Protection Agency, Region 6 ("EPA").

2. I joined EPA in my capacity as an Environmental Engineer in 1990. I have a B.S. in Geological Engineering and have been doing oil and gas lease inspections since 1980. I am responsible for doing Clean Water Act inspections of different facilities, including all aspects of oil and gas operations. I have extensive experience investigating Clean Water Act produced water or brine discharges and directing remediation activities of the same.

3. Clean Water Act inspections at oil and gas operations consist of a physical inspection of the facility and surrounding waterbodies while taking field measurements with a YSI Pro 30 Conductivity Meter or YSI 30 Conductivity Meter to identify produced water from oil and gas operations at the facility, near the facility and in the nearby surface waterbodies to the facility. During an inspection, I may assess the structural integrity, condition, presence, and availability of surface impoundment/pits, storage tanks, pumps, pipes, hoses, flow lines, vents, and other oil and gas associated devices or equipment located at a facility. If there is a discharge of pollutants, specifically oil field waste like oil or produced water, from the facility, I will walk the flow path of the discharge, if feasible, and determine the spill's impacts, including impacts to surrounding water bodies. Additionally, I will observe indicative features in and around the nearby surface water body to provide indications of waters of the U.S. I also review records and management plans, if available, to determine if the facility is in compliance with its National Pollutant Discharge Elimination System permit.

4. On March 16, 2018, I conducted an inspection of the oil field disposal and production facility known as the Kennedy Lease (EPA Identification Number: OKU000867) located at Latitude 36.586969 North and Longitude -96.498093 West in the Northeast Section 1, Township 24 North, Range 7 East of Osage County, Oklahoma. I observed that pollutants, specifically oil field wastes and produced water generated from oil production activities, had been discharged from a subsurface injection flowline at the facility to a nearby surface water body. Pollutants were discharged to the tributary of Daniel's Run Creek, which was the nearby surface water body. I determined that the water located at the discharge point of entry into the tributary of Daniel's Run Creek (Latitude 36.586494 North and Longitude -96.499100 West) was contaminated from

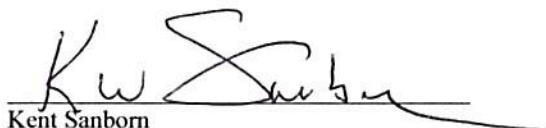
produced water discharges and measured 95,541 milligrams per liter ("mg/L") Total Dissolved Solids ("TDS") with appropriately maintained and calibrated equipment. I determined that the water located upstream along the tributary of Daniel's Run Creek, which was the current water quality of unaffected water in the tributary, located at Latitude 36.587812 North and Longitude -96.498510 West, was 816 mg/L TDS during the inspection. Further downstream from the point of entry, I measured TDS of 11,250 mg/L at Latitude 36.583612 North and -96.502629 West. Also, at this location further downstream, I observed that the tributary had defined bed, bank, and some hydrological features that were indicative of waters of the U.S.

5. On March 20, 2018, I conducted an inspection of the oil field disposal and production facility known as the Kennedy Lease (EPA Identification Number: OKU000867) located at Latitude 36.586969 North and Longitude -96.498093 West in the Northeast Section 1, Township 24 North, Range 7 East of Osage County, Oklahoma. I observed that pollutants, specifically oil field wastes and produced water generated from oil production activities, had continued to be discharged from the polluted and saturated flow path and flow line at the facility to a nearby surface water body. Pollutants were discharged to the tributary of Daniel's Run Creek, the nearby surface water body. I determined that the water located at the discharge point of entry into the tributary of Daniel's Run Creek (Latitude 36.587307 North and Longitude -96.499176 West) was contaminated from produced water discharges and measured 77,765 mg/L TDS with appropriately maintained and calibrated equipment. At the furthest measured point downstream from the point of entry in the tributary of Daniel's Run Creek, I measured TDS of 30,419 mg/L at Latitude 36.583809 North and -96.502419 West. Also, at this further downstream location, I observed impacted aquatic life, including a dead crayfish. Also, between the point of entry and the furthest measured point downstream along the tributary of Daniel's Run Creek, I observed that the tributary had defined bed, bank, and some hydrological features that were indicative of waters of the U.S.

6. On April 12, 2018, I conducted an inspection of the oil field disposal and production facility known as the Kennedy Lease (EPA Identification Number: OKU000867) located at Latitude 36.586969 North and Longitude -96.498093 West in the Northeast Section 1, Township 24 North, Range 7 East of Osage County, Oklahoma. I observed that pollutants, specifically oil field wastes and produced water generated from oil production activities, had continued to be discharged from the polluted and saturated flow path and flow line at the facility to a nearby surface water body. Pollutants were discharged to the tributary of Daniel's Run Creek, the nearby surface water body. I determined that the water located at the discharge point of entry into the tributary of Daniel's Run Creek (Latitude 36.586514 North and Longitude -96.499076 West) was contaminated from produced water discharges and measured 83,783 mg/L TDS with appropriately maintained and calibrated equipment. At the furthest measured point downstream from the point of entry in the tributary of Daniel's Run Creek (approximately the same location as measured on March 20, 2018), I measured TDS of 23,587 mg/L at Latitude 36.583809 North and -96.502419 West. Further downstream at Latitude 36.583756 North and Longitude -96.502481 West, I observed impacted aquatic life, including a dead crayfish. Also, between the point of entry and the furthest measured point downstream along the tributary of Daniel's Run Creek, I observed that the tributary had defined bed, bank, and some hydrological features that were indicative of waters of the U.S. Finally, I determined that the water located upstream along the tributary of Daniel's Run Creek, which was the current water quality of unaffected water in the tributary, located at Latitude 36.587812 North and Longitude -96.498510 West, was 917 mg/L TDS during the inspection.

6. On April 26, 2018, I conducted an inspection of the oil field disposal and production facility known as the Kennedy Lease (EPA Identification Number: OKU000867) located at Latitude 36.586969 North and Longitude -96.498093 West in the Northeast Section 1, Township 24 North, Range 7 East of Osage County, Oklahoma. I observed that pollutants, specifically oil field wastes and produced water generated from oil production activities, had continued to be discharged from the polluted and saturated flow path and flow line at the facility to a nearby surface water body. Pollutants were discharged to the tributary of Daniel's Run Creek, the nearby surface water body. I determined that the water located at the discharge point of entry into the tributary of Daniel's Run Creek (Latitude 36.586514 North and Longitude -96.499076 West) was contaminated from produced water discharges and measured 43,810 mg/L TDS with appropriately maintained and calibrated equipment. At the furthest measured point downstream from the point of entry in the tributary of Daniel's Run Creek

(approximately the same location as measured on March 20, 2018 and April 12, 2019), I measured TDS of 27,267 mg/L at Latitude 36.583809 North and -96.502419 West. Also, between the point of entry and the furthest measured point downstream along the tributary of Daniel's Run Creek at Latitude 36.585146 North and Longitude -96.500020 West, I observed impacted aquatic life, including a dead crayfish. Also, between the point of entry and the furthest measured point downstream along the tributary of Daniel's Run Creek, I observed that the tributary had defined bed, bank, and some hydrological features that were indicative of waters of the U.S. Finally, I determined that the water located upstream along the tributary of Daniel's Run Creek, which was the current water quality of unaffected water in the tributary, located at Latitude 36.587812 North and Longitude -96.498510 West, was 486 mg/L TDS during the inspection.


Kent Sanborn

Executed this 4 day of December 2019 in Bartlesville, Oklahoma.

Subscribed and sworn to before me, the undersigned Notary Public,

This 4 day of December, 2019

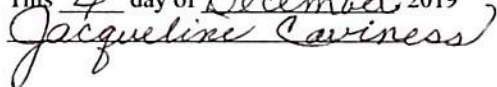




Exhibit 6

A		B		C		D	
Date	EPA Action	Description		Post Action			
1	3/16/2018	EPA Inspection at facility	An EPA Clean Water Act (CWA) inspection occurred in response to a reported spill at	Inspection Report Finalized and referred to Enforcement.			
2	3/20/2018	EPA Inspection at facility	EPA conducted a follow-up inspection.	Inspection Report Finalized and referred to Enforcement.			
3	4/5/2018	Email	EPA provided one inspection report for inspection dates 3/16 and 3/20 to notify the company, Diamond 3S, LLC (Respondent) of the identified areas of	No immediate follow-up from Respondent.			
4	4/11/2018	Certified Mail	An Administrative Order (AO) was mailed and required injunctive relief of the spill	Delivered 4/16/2018 to Respondent.			
5	4/12/2018	EPA emails and EPA inspection at facility	EPA emailed electronic copy of AO to provide compliance assistance (also EPA indicated hard copy was coming in the mail); EPA conducted another follow-up	EPA received email from Respondent that provided some compliance documentation in response to the AO.			
6	4/18/2018	EPA Inspection at facility	EPA conducted a follow-up inspection.	Inspection Report Finalized and referred to Enforcement.			
7	4/26/2018	EPA Inspection at facility	EPA conducted a follow-up inspection.	Inspection Report Finalized and referred to Enforcement.			
8	5/11/2018	Email received	Received email from Respondent to provide some compliance documentation	Scheduling of on-site meeting.			
9	5/18/2018	On-site meeting with EPA, Bureau of Indian Affairs (BIA), Respondent	Met with Respondent to see current site conditions and provide compliance assistance with BIA on actions being taken to achieve compliance with AO.	Some follow up emails sent from Respondent through end of May.			
10	5/24-25/2018	Emails received	Received email from Respondent to provide some compliance documentation	EPA assessment of information			
11	5/30/2018	Email received	Received email from Respondent to provide some compliance documentation	EPA assessment of information			
12	6/18/2018	EPA Inspection at facility	EPA conducted a follow-up inspection.	Inspection Report Finalized and referred to Enforcement.			
13	7/12/2018	Calls	EPA left voice message to request another site visit with compliance assistance with	Site visit scheduled by BIA			

	A	B	C	D
15	7/19/2018	Site Visit with BIA and Osage Nation and Respondent only	EPA was not able to attend this compliance assistance meeting due to miscommunication with BIA.	Some injunctive relief was decided at this meeting related to the surface at the facility by BIA and Respondent. EPA was not present.
16	7/31/2018	Email received	Environmental Company (hired by the insurance company) provided scope of	Scope of Work with multiple solutions provided.
17	8/5/2018	Email received	Received email from Respondent to provide some compliance documentation	EPA assessment of information
18	8/8/2018	Email received	EPA emailed a copy of the 5 inspection reports conducted from March 2018-April	No immediate follow-up from Respondent.
19	8/27/2018	EPA Inspection at facility	EPA conducted a follow-up inspection.	Inspection Report Finalized and referred to Enforcement.
20	9/28/2018	Certified Mail	The Administrative Penalty Order was filed.	Complaint received by Respondent on 10/9/2018
21	10/4/2018	Email received	Received email from Respondent to request an extension of time to complete	EPA assessment of information
22	10/31/2018	EPA Inspection at facility	EPA conducted a follow-up inspection.	Inspection Report Finalized and referred to Enforcement.
23	11/6/2018	Email and Call	EPA sent an email requesting to have a settlement meeting with Respondent and	No immediate follow-up from Respondent.
24	11/8/2018	Call	EPA attorney left message with Respondent to request a settlement	No immediate follow-up from Respondent.
25	11/13/2018	Call received and Settlement Call with EPA and Respondent	Respondent responded to EPA attorney and indicated a settlement meeting that day could work; EPA and Respondent Settlement Call was conducted to discuss	Settlement meeting scheduled same day by case team. Respondent wanted to retain an attorney.
26	N/A	Certified Mail	Letter sent to Respondent to indicate to the Respondent that an Answer to the Complaint needed to be filed with 30 days	EPA does not have confirmation this letter was received by the Respondent.
27	11/20/2018	Email and Call	EPA provided one inspection report for inspection date 10/31. EPA received a call	No immediate follow-up from Respondent.

	A	B	C	D
28	12/7/2018	Email and Calls	EPA attorney called Respondent. EPA called Respondent to set up settlement meeting and Respondent indicated that Respondent	Scheduling of Settlement Call.
29	12/9/2018	Email	EPA received Requests for Extension for both cases (CWA and SDWA) from	EPA did not object to the extension.
30	12/10/2018	Settlement Call with EPA and Respondent and Emails received.	EPA Settlement Call with Respondent and an extension for the Complaint was discussed during the call. EPA requested summary of what's been accomplished to date to show compliance in CWA.	EPA assessment of information
31	12/12/2018	Email	EPA sent email to Respondent in response to emails sent on 12/10 to indicate EPA	EPA assessment of information
32	12/19/2018	Email	EPA received email from Respondent to provide some compliance documentation	EPA assessment of information
33	1/7/2019	Email	EPA received email from Respondent to provide some compliance documentation	Furlough.
34	N/A	Settlement Call with EPA and Respondent	This Settlement Call was scheduled, but did not happen due to the furlough.	Call scheduled for 1/9/2018. Furlough.
35	1/28/2019	Emails	EPA sent email to Respondent in response to email sent on 1/7 to indicate EPA	No immediate follow-up from Respondent.
36	1/31/2019	Extension request granted	For CWA case, 60 day extension granted to 04/01/2019.	No action.
37	2/1/2019	Email	EPA sent email requesting settlement	Scheduling of Settlement Call.
38	2/5/2018	Phone call (Ryan Summers)	EPA Settlement Call with Respondent. Respondent and EPA discussed compliance with SDWA and CWA and expenses to come into compliance with CWA. Respondent made another Inability to Pay	No immediate follow-up from Respondent.
39	2/7/2018	Email	EPA received email from Respondent to provide some compliance documentation	EPA assessment of information
40	2/28/2019	Emails	EPA attorney received 2 years of tax returns in regards to inability to pay. EPA	EPA assessment of information

	A	B	C	D
41	3/19/2019	Email	EPA attorney emailed Respondent to follow up on email sent on 2/28 requesting additional financial documentation needed	No action.
42	3/20/2019	Email received and Call and Email	Respondent responded and indicated he'd provided missing documentation. EPA	No action.
43	3/21/2019	Email received	Respondent sent EPA email with an attempt to send additional documentation	EPA assessment of information
44	3/25/2019	Email	EPA requested resending of documents on	EPA assessment of information
45	3/27/2019	Email	Respondent resent documents as	EPA assessment of information
46	3/29/2019	Email	EPA sent email to Respondent to hold off	EPA assessment of information
47	7/18/2019	EPA Inspection at facility	EPA conducted a follow-up inspection.	Inspection Report Finalized and referred to Enforcement.
48	8/20/2019	Email	EPA sent email with copy of inspection report related to recent compliance	No immediate follow-up from Respondent.
49	9/5/2019	Certified Mail	EPA letter sent indicating if no answer filed, EPA will go forth with a Motion for Default	Letter received by Respondent on 9/10/2019.
50	9/18/2019	Call and Emails	EPA left voice message related to Notice of Intent for Motion for Default to Diamond 3S, LLC and email with the same message; EPA Settlement Call with Respondent.	Scheduling of Settlement Call.
51	9/23/2019	Settlement Call with EPA and Respondent	Respondent and EPA discussed the current status of the cases, the continued noncompliance issues for the SDWA and CWA cases, and indicated recent site conditions from CWA inspection conducted	EPA follow up to provide inspection report to Respondent.
52	9/25/2019	Email	EPA sent a follow up email to the new email address requested by Respondent	No action.

Exhibit 7



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1201 ELM STREET
DALLAS, TEXAS 75270-2102

SEP 05 2019

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7005 1820 0003 7456 0015

Mr. Ryan Summers, Owner
Diamond 3S, LLC
20102 West Coyote Trail
Sand Springs, Oklahoma 74063

Re: Notice of Intent to File Motion for Default Order Against Diamond 3S, LLC
Docket Number: CWA-06-2018-1831
Facility Number: OKU000867

Dear Mr. Summers:

On September 28, 2018, the Environmental Protection Agency (EPA) filed an Administrative Complaint (Complaint) against Diamond 3S, LLC (Diamond 3S) for violations of Section 301(a) of the Clean Water Act (CWA). The Complaint assessed a civil penalty of sixty-four thousand and five hundred dollars (\$64,500.00). According to the return receipt, Diamond 3S, LLC was served this Complaint on October 9, 2018.

Prior to the Complaint being filed against Diamond 3S, violations were identified during inspections conducted by EPA on March 16, 2018 and March 20, 2018. The inspections were conducted at your oil field disposal and production area known as the Kennedy Lease located near Pawhuska, Osage County, Oklahoma. The violations alleged were for the unauthorized discharge of pollutants, specifically oil field brine and produced water, to a water of the United States. Administrative Order (AO), Docket Number CWA-06-2018-1789 was issued to Diamond 3S on April 11, 2018 addressing the violations and the return receipt indicated the AO was delivered on April 16, 2018. EPA conducted follow up inspections on April 12, 2018 and April 26, 2018 at your facility and documented the same violations as addressed in the AO. Diamond 3S had provided some documentation demonstrating Diamond 3S follow-up actions, but the documentation and actions were insufficient. As such, Diamond 3S remains out of compliance with the CWA related to the ongoing contamination from the documented inspection dates.

After the Complaint was filed, EPA and Diamond 3S had three informal settlement meetings on November 13, 2018, December 10, 2018, February 5, 2019. During this period, EPA did receive some documentation from Diamond 3S associated with the settlement, but it was insufficient to show compliance with the CWA at the facility.

Pursuant to 40 C.F.R. § 22.15 as in the Complaint, Diamond 3S was required to file an Answer or request a hearing. As of the date of this letter, Diamond 3S has not filed an Answer or requested a hearing.

Re: Notice of Intent for Motion of Default
Diamond 3S, LLC

The purpose of this letter is to advise Diamond 3S that EPA will file a Motion for Default pursuant to 40 C.F.R. § 22.17. The Motion for Default will seek full resolution of the proceeding and assessment of the full penalty sought in the Complaint. If the Motion for Default is granted and a penalty is assessed in this matter, the penalty will become due thirty (30) days after the default order becomes final. 40 CFR § 22.17 (d).

EPA is committed to ensuring compliance with the requirements of the CWA and the National Pollutant Discharge Elimination System program. If you have any questions or wish to discuss the possibility of a settlement of this matter, please contact me at (281) 983-2218 or Jeanne Eckhart at (214) 665-8174.

Sincerely,

A handwritten signature in blue ink that reads "Scott McDonald for".

Rusty Herbert
Assistant Regional Counsel

cc: Ms. Robin Phillips, Superintendent
Osage Agency, Bureau of Indian Affairs
P.O. Box 1539
Pawhuska, Oklahoma 74056

Ms. Jann Hayman, Environmental Director
Osage Nation, ENR Department
100 West Main Street, Suite 304
Pawhuska, Oklahoma 74056

Exhibit 8

SENDER: COMPLETE THIS SECTION

COMPLETE THIS SECTION ON DELIVERY

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MR. RYAN SUMMERS
 DIAMOND 35, LLC
 20102 WEST COYOTE TRAIL
 SAND SPRINGS, OK 74063



9590 9401 0007 5205 8857 51

2. Article Number (Transfer from service label)

7005 1820 0003 7456 0015

A. Signature
 X *Ryan Summers* Agent Addressee

B. Received by *Ryan Summers* C. Date of Delivery

D. Is delivery address different from item B? Yes
 If YES, enter delivery address below: No



3. Service Type
- Adult Signature
 - Adult Signature Restricted Delivery
 - Certified Mail®
 - Certified Mail Restricted Delivery
 - Collect on Delivery
 - Collect on Delivery Restricted Delivery
 - Insured Mail
 - Priority Mail Express®
 - Registered Mail™
 - Registered Mail Restricted Delivery
 - Return Receipt for Merchandise
 - Signature Confirmation™
 - Signature Confirmation Restricted Delivery

Track Another Package +

Tracking Number: 70051820000374560015

Remove X

Your item was delivered at 10:16 am on September 10, 2019 in SAND SPRINGS, OK 74063.

Delivered

September 10, 2019 at 10:16 am
Delivered
SAND SPRINGS, OK 74063

Get Updates 

Feedback

Text & Email Updates



Tracking History



September 10, 2019, 10:16 am

Delivered

SAND SPRINGS, OK 74063

Your item was delivered at 10:16 am on September 10, 2019 in SAND SPRINGS, OK 74063.

September 9, 2019, 3:13 pm

Notice Left (No Authorized Recipient Available)

SAND SPRINGS, OK 74063

September 9, 2019, 8:09 am

Out for Delivery

SAND SPRINGS, OK 74063

September 9, 2019, 2:49 am

Arrived at Unit

SAND SPRINGS, OK 74063

September 8, 2019, 8:51 pm

Departed USPS Regional Facility

TULSA OK DISTRIBUTION CENTER

September 8, 2019

In Transit to Next Facility

September 7, 2019, 2:42 pm

Arrived at USPS Regional Facility

TULSA OK DISTRIBUTION CENTER

September 6, 2019, 8:31 pm

Departed USPS Regional Facility

COPPELL TX DISTRIBUTION CENTER

September 6, 2019, 8:18 pm

Arrived at USPS Regional Facility

COPPELL TX DISTRIBUTION CENTER

Feedback

Product Information



See Less ^

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs

Exhibit 9



**Region 6 Compliance Assurance and Enforcement Division
INSPECTION REPORT**

Inspection Date(s):	07/18/2019		
Media:	Water		
Regulatory Program(s)	Brine - SDWA		
Company Name:	Diamond 3S, LLC		
Facility Name:	Kennedy Lease		
Facility Physical Location:	36.587028, -96.498042		
(city, state, zip code)	Pawhuska, Oklahoma 74056		
Mailing address:	20102 West Coyote Trail		
(city, state, zip code)	Sand Springs, Oklahoma 74063		
County/Parish:	Osage County		
Facility Contact:	Ryan Summers		
	918-625-3080		
FRS Number:	N/A		
Identification/Permit Number:	OKU000867		
Media Number:	N/A		
NAICS:	21111		
SIC:	1311		
Personnel participating in inspection:			
Kent W. Sanborn	6ECDWE	Environmental Engineer	(918) 557 – 1615
EPA Lead Inspector Signature/Date	Kent W. Sanborn <small>Digitally signed by Kent W. Sanborn DN: cn=Kent W. Sanborn, o, ou=6EN-WR, email=sanborn.kent@epa.gov, c=US Date: 2019.08.05 10:17:35 -05'00'</small>		
	Kent W. Sanborn		Date
Supervisor Signature/Date	GUY TIDMORE <small>Digitally signed by GUY TIDMORE DN: c=US, o=U.S. Government, ou=Environmental Protection Agency, cn=GUY TIDMORE, 0.9.2342.19200300.100.1.1=68001003655426 Date: 2019.08.15 12:25:41 -05'00'</small>		15 AUG 2019
	Guy Tidmore		Date

Section I – INTRODUCTION

PURPOSE OF THE INSPECTION

EPA Region 6 inspector K.W. Sanborn visited the Diamond 3S, LLC oil and gas facility located at latitude 36.587028 and longitude -96.498042 near Pawhuska, Oklahoma on 07/18/2019 for an unannounced inspection. No representatives of Diamond 3S, LLC were present for the inspection. The inspection was conducted by authority of the Clean Water Act and the Safe Drinking Water Act to determine compliance with the Environmental Protection Agency (EPA) regulations.

FACILITY DESCRIPTION

The facility is known as the Kennedy Lease and has an EPA ID No. OKU000867.

Section II - OBSERVATIONS

The previous discharge-affected surface area was fenced and void of any vegetation. The lease was shut down at the time of the inspection and all injection wells were closed in. I observed fluids at the base of the outlet of the remediation pond or lake. With a calibrated YSI Pro 30 conductivity meter, I took a Total Dissolved Solids (TDS) reading of approximately 14,000 milligrams per Liter (mg/L) of those fluids. I observed several dead fish in the tributary below the lake. I took several more TDS readings through the tributary downstream of the fenced in area and identified elevated TDS that ranged from 2,500 mg/L to 10,000 mg/L.

Section III – AREAS OF CONCERN

The previous flow path has elevated levels of salt and no growth. The containment pond is not being pumped out as previously indicated by the Company. There were elevated levels of TDS in the tributary and dead aquatic life, including fish.

Section IV – FOLLOW UP

Conduct a follow up inspection as needed.

Section V – LIST OF APPENDICES

N/A

Exhibit 10

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6**

In the Matter of	§	Docket No. CWA-06-2018-1831
	§	
Diamond 3S, LLC	§	
	§	
Respondent	§	
	§	
Facility No.: OKU000867	§	Affidavit

AFFIDAVIT OF JEANNE ECKHART

I, JEANNE ECKHART, make the following statement truthfully from personal knowledge, under penalty of perjury, in accord with 28 U.S.C. § 1746.

1. I make this statement in my capacity as an Environmental Scientist employed in the Energy Sector Compliance Section of the Enforcement and Compliance Assistance Division of the United States Environmental Protection Agency, Region 6 (“EPA”).

2. I joined EPA in my capacity as an Environmental Scientist in 2015 with job duties as an inspector and enforcement officer. As a part of my inspector duties, I am responsible for doing Clean Water Act (CWA) and Safe Drinking Water Act (SDWA) inspections at different facilities, including onshore oil and gas operations, and determining if facilities in this industry are in compliance with the CWA, the National Pollutant Discharge Elimination System (NPDES), or the Underground Injection Control regulations within the SDWA program. As a part of my enforcement officer duties, I review the

relevant evidence collected, and assist in making recommendations to management to initiate enforcement actions under the CWA and SDWA.

3. Specifically, I provide the review, analysis, and evidence needed to initiate administrative actions against oil and gas operators and companies to achieve compliance with the CWA. The inspections that have an unauthorized discharge of contaminants from oil and gas industry extraction practices are assessed by me related to the site's hydrological conditions, evidence provided by the inspector, and evidence from other resources, to determine if the nearby surface water body meets the criteria of a water of the U.S.

4. Additionally, my job duties as an enforcement officer are to assess penalties within the CWA regulations and EPA policies. When assessing these penalties, I calculate the amounts within EPA's CWA policy as well as accounting for the environmental concerns that were in violation of the CWA.

5. I am one of the EPA, Region 6 enforcement officers assigned to review information related to the CWA at Diamond 3S, LLC ("Respondent"). In my capacity as an enforcement officer for EPA, I am familiar with the CWA.

6. As one of the enforcement officers for the matter against Respondent, I calculated the penalty based on a consideration of the required statutory factors in Section

309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3) for the Complaint that was issued against Respondent.

7. Section 309(g)(2)(B) authorizes the Administrator of EPA to assess administrative civil penalties not to exceed \$21,393.00 per day for each day during which a violation occurs or continues, up to a maximum of \$267,415.

8. 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, or produced water, to “waters of the United States” is a non-permitted discharge.

9. Respondent is a corporation incorporated under the laws of the State of Oklahoma, 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.

10. At all times relevant to this action (“all relevant times”), Respondent owned or operated an oil field disposal and production facility known as the Kennedy Lease, located in Pawhuska, Osage County, Oklahoma (“facility”) and was, therefore, an “owner or operator” within the meaning of 40 C.F.R. § 122.2. The facility was located at Latitude 36.586969 North and Longitude -96.498093 West (Northeastern Quarter of Section 1, Township 24 North, and Range 7 East).

11. On March 16, 2018, an EPA inspector observed that pollutants, specifically oil field wastes and produced water generated from oil production activities, had been discharged from the facility to “waters of the United States,” as that term is defined by 40 C.F.R. § 122.2. Pollutants were discharged to the tributary of Daniel’s Run 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 of Daniel’s Run Creek (Latitude 36.586494 N and Longitude -96.499100 W) was contaminated from produced water discharges and measured 95,541 milligrams per Liter (“mg/L”) Total Dissolved Solids (“TDS”).

12. On March 20, 2018, an EPA inspector observed that pollutants, specifically oil field wastes and produced water generated from oil production activities, had been discharged from the facility to “waters of the United States,” as that term is defined by 40 C.F.R. § 122.2. Pollutants were discharged to the tributary of Daniel’s Run 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 of Daniel’s Run Creek (Latitude 36.586494 N and Longitude -96.499100 W) was contaminated from produced water discharges and measured 77,765 mg/L TDS.

13. On April 12, 2018, an EPA inspector observed that pollutants, specifically oil field wastes and produced water generated from oil production activities, had been discharged from the facility to “waters of the United States,” as that term is defined by 40

C.F.R. § 122.2. Pollutants were discharged to the tributary of Daniel's Run 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 of Daniel's Run Creek (Latitude 36.5866514 N and Longitude -96.499076 W) was contaminated from produced water discharges and measured 83,783 mg/L TDS.

14. On April 26, 2018, an EPA inspector observed that pollutants, specifically oil field wastes and produced water generated from oil production activities, had been discharged from the facility to "waters of the United States," as that term is defined by 40 C.F.R. § 122.2. Pollutants were discharged to the tributary of Daniel's Run 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 of Daniel's Run Creek (Latitude 36.5866514 N and Longitude -96.499076 W) was contaminated from produced water discharges and measured 43,810 mg/L TDS.

15. Each day of unauthorized discharge is a violation of Section 301 of the Act, 33 U.S.C. § 1311. Because Respondent owns and operates an oil and gas production facility that discharge pollutants into waters of the U.S., Respondent is required by Section 402(p) of the CWA and 40 C.F.R. Part 122 to have coverage under the NPDES program to perform these acts. The Respondent does not have NPDES permit coverage to discharge pollutants from the facility to waters of the U.S.

16. On April 11, 2018, EPA sent Respondent a Cease and Desist Administrative Order (AO) ordering the Respondent to:

- a. Cease any continued discharge of pollutants;
- b. Remove all pollutants from the flow paths located between the point of discharge and the point of entry into the tributary of Daniel's Run Creek;
- c. Remove sufficient amounts of pollutants from the tributary of Daniel's Run Creek and from Daniel's Run Creek, which were discharged on or about March 16, 2018 and March 20, 2018, so that the TDS in the tributary downstream of the discharge is at or below background TDS levels;
- d. Provide a written certification including photographs, in-stream salinity, conductivity, and total dissolved solids measurements, manifests, work orders, and/or receipts to document how discharges and the removal of pollutants have been properly addressed within thirty (30) days of the effective date of the AO and to verify in the certification that the company name, mailing address, and name of authorized signatory for the company are correct; and,
- e. Develop and submit to EPA a Pollution Prevention Plan to prevent similar occurrences, within thirty (30) days of the effective date of the AO.

17. 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), on January 28, 2018, EPA filed an Administrative Complaint against Respondent seeking a proposed penalty of sixty-four thousand and five hundred dollars (\$64,500).

A. The Statutory Factors

18. The CWA enumerates in Section 309(g)(3), 33 U.S.C. § 1319(g)(3), the factors that the court and EPA must consider in the assessment of any civil penalty. The first statutory factor deals with the violation itself and considers the “nature, circumstances, extent and gravity” of the CWA violation. The next group of factors are “the violator’s ability to pay, any prior history of CWA violations, the degree of culpability,” and, depending on the circumstances surrounding the violator’s act, the penalty may either increase or decrease when considering these factors. “Economic benefit” is a factor which tries to capture any economic advantage the facility may have gained as a result of noncompliance. The final factor is a catch-all and it is “such other matters as justice may require.”

19. One of the main goals of assessing a penalty against a violator is deterrence. Penalties deter noncompliance and help protect the environment and public health by deterring future violations. By recovering the economic benefit resulting from noncompliance, penalties also help to ensure that violators do not obtain an economic advantage over their competitors. Before a penalty is calculated using the statutory penalty factors, I determined the number of days the Respondent was in violation of the CWA. I considered each day where there was an unauthorized discharge of a pollutant from a single point source to a water of the US, a violation of the CWA. In reviewing the inspection reports, I determined that there were at least four unauthorized discharge violations which occurred on March 16, 2018, March 20, 2019, April 12, 2019, and April 26, 2019. The violation was evident based on elevated TDS levels in the impacted water body. The

statutory maximum penalty is \$21,393.00 per day per violation, up to a maximum of \$267,415.00.

20. Based on my analyses of the statutory factors for this case as recounted below, I calculated a penalty of \$64,500.

1. Gravity Component

21. The gravity component accounts for nature, circumstances, extent and gravity of the violation, economic impact, good-faith efforts to comply and such other matters as justice may require. It is the punitive component of the penalty. When determining the gravity of the violation, it is proper to examine the severity of the violation. This includes considering the presence or absence of actual or possible environmental harm associated with the violation and the importance of the violation to the regulatory scheme.

a. Nature, circumstances, extent and gravity of the violation

22. Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), requires that EPA consider the nature, circumstances, extent and gravity of the violation. Oil field brine, or produced water, is a pollutant associated with oil and gas production activities.

23. Produced water, or brine, is a byproduct of crude oil production. Oil field brine has high concentrations of calcium and sodium salts and since there is little economic market for brine, the brine must be disposed of properly. Brine is usually disposed of by underground injection well(s) into subsurface formations designated for brine disposal.

24. During the March 16, 2018 inspection, the EPA inspector had observed that a flow line at the facility failed and leaked out produced water under the subsurface near an injection well at the facility. The inspector observed salt precipitated on the surface above the ruptured flow line, indicating that the leak had been occurring for an extended period and the hillside towards the tributary of Daniel's Run Creek was saturated and muddy with produced water contamination. The produced water flowed from the subsurface and the contaminated hillside into the tributary of Daniel's Run Creek and Daniel's Run Creek, which are waters of the U.S. The EPA inspector observed dead vegetation along the flow path to the point of entry into the tributary of Daniel's Run Creek.

25. The tributary of Daniel's Run Creek is a relatively permanent flowing water body and approximately 1 mile downstream from the point of entry the tributary flows into Daniel's Run Creek, which is also a relatively permanent flowing water body. The tributary and creek were observed flowing during the inspections, had defined bed and bank, and high-water marks were visible, which are indications of a consistently flowing water body. The tributary and creek flow seasonally, if not more frequently, and aerial imagery has defined tributary and creek channels visible to support consistent water flow in the tributary and creek. The tributary of Daniel's Run Creek and Daniel's Run Creek have a hydrological connection to downstream water bodies that are navigable, which is Hominy Creek. In conclusion, the tributary of Daniel's Run Creek and Daniel's Run Creek are waters of the U.S.

25. Respondent's discharge of produced water, or brine, into surface waters may cause environmental harm because high salt concentration can kill vegetation and

aquatic life. The chemical make-up of produced water varies in formations and can contain heavy metals and other forms of salt, with the commonly present sodium chloride. In 1988, the EPA's Office of Research and Development Environmental Research Laboratory in Duluth, Minnesota, performed research and studied the effects sodium chlorides, a form of salt in produced waters, had on aquatic life (Ambient Water Quality Criteria for Chloride, February 1988). From this research, EPA found that freshwater fish were affected by high concentrations of sodium chloride at levels of 230 milligrams per liter (mg/L), if the freshwater aquatic organism is exposed above this concentration in a four-day average at least once every three years, or if the one-hour average concentration exceeds more than 860 mg/L more than once every three years. These averages only include chlorides associated with sodium, and the research indicates exposure to chlorides with potassium, calcium, or magnesium can increase the likelihood of detrimental effects to aquatic life. Freshwater fish are sensitive to acute exposures (short term) over these limits and other aquatic life can be susceptible to these types of chlorides as well.

26. EPA uses a successfully calibrated conductivity meter to measure the TDS of the surface water bodies, which includes concentrations of sodium chlorides, since it is a dissolved solid. Therefore, in this case, EPA documented the TDS levels at the point of entry into the tributary of Daniel's Run Creek to be elevated above what would have normally been occurring in the tributary. The EPA inspector measured upstream of the point of entry into the tributary of Daniel's Run Creek and measured 816 milligrams per liter ("mg/L") Total Dissolved Solids ("TDS"), which are the freshwater conditions in the tributary EPA observed. The TDS was measured during each of the 4 inspection dates, and

showed elevated levels of TDS above the upstream, or freshwater measurement taken, as referenced above in No. 11-14. The elevated TDS levels were measured on March 16, 2018, March 20, 2018, April 12, 2018, and April 26, 2018.

27. These levels of TDS are in excess of the recommended and researched concentrations that negatively affect aquatic life in a one-time, acute and in chronic exposure (Ambient Water Quality Criteria for Chloride, February 1988). These documented field measurements are a clear violation of the CWA and these observed measurements undermine the statutory purpose of the CWA.

2. Adjusting the Gravity Component: Ability to Pay, History of Violations and Degree of Culpability

28. The gravity component adjustment factor allows EPA to consider the differences between cases and to apply the gravity component to these different facts. This adjustment factor promotes the fair and equitable treatment of the regulated community by increasing or decreasing the gravity component. Under the adjusting the gravity component, there are some factors that distinguish different cases. These factors are: ability to pay, history of violations and degree of culpability.

a. Ability to Pay

29. Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), requires that EPA consider the economic impact on the violator. This factor takes into account the different

impacts of a penalty on violators by looking into their financial capability and the size of the business or municipality. It also considers Respondent's ability to pay a penalty. An inability to pay defense can only be invoked when the violator can prove it cannot pay the assessed penalty and Respondent indicated an inability to pay, but did not provide enough documentation, as requested by EPA, to form an inability to pay determination. Only 3 years of tax return documentation was provided by Respondent to run the preliminary analysis. Within that preliminary analysis, the EPA financial model estimated that there was a 90% probability that Diamond 3S, LLC can currently afford a \$64,500 penalty after meeting the total Pollution Control Expenditures of \$26,323. And ABEL estimates a 70% probability that Diamond 3S, LLC could afford to pay a penalty of \$235,430 after meeting total Pollution Control Expenditures of \$26,323. EPA typically employs the 70% probability level for determining ability to pay, with litigation team considerations to determine other appropriate factors or measures to consider with these claims. The EPA case team did not pursue further analysis after the preliminary analysis was run for this claim from the Respondent. From ABEL's outputs above, the financial model estimates a 90% probability that the Respondent can afford to pay the \$64,500 penalty. Therefore, EPA did not choose to use this factor to reduce the penalty.

b. History of Violations

30. Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), requires that EPA consider the factor, history of violations. The Respondent does have a history of non-compliance. On April 11, 2018, EPA issued an Order for Compliance for similar violations of the CWA. Records indicate that the Respondent did not fully comply with the Order.

c. Degree of Culpability

31. Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), requires that EPA consider the degree of culpability. This factor can be used to either increase or mitigate the gravity component. If the violator is not trying to come into compliance or is acting in bad faith, the gravity component may increase. EPA should consider how quickly the violation was corrected and how fast the damage was mitigated before the enforcement action was commenced. The agency must also take into regard, the degree of effort the violator put forth to remedy the violation and to respond to the enforcement action. To date, the EPA has issued one Administrative Order to the Respondent. The Respondent has not complied with this Order and is still out of compliance, as most recently observed by an EPA inspector on July 18, 2019.

d. Such Other Matters as Justice May Require

32. Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), requires that EPA consider the factor, such other matters as justice may require. This factor can be used to increase or mitigate the gravity component. If a violator effects an environmentally sensitive area with noncompliance (e.g., environmental justice area of concern, or negatively effects an endangered species), the EPA may increase the gravity component. The EPA must consider these sensitive areas and deter noncompliance within them. This area was considered sensitive due to the land being owned by a tribal nation during all relevant times of the documented noncompliance with the CWA.

2. The Economic Benefit Component

33. Section 309(g)(3) of the CWA, 33 U.S.C. 1319(g)(3), requires that EPA consider the economic benefit of noncompliance. The purpose of the economic benefit factor is to remove any economic advantage the facility may have gained as a result of noncompliance. Computing the economic benefit involves three parts as follows: 1) capital investments, 2) one-time, non-depreciable expenditure and 3) annually recurring costs.

34. Capital investments are those expenditures that are one-time depreciable costs which have been put off by the violator's failure to promptly comply with the regulations. In this case, I estimated the capital costs for infrastructure replacement, including the flow line where the rupture occurred. I estimated the capital investment costs to be \$5,000 for each date of violation documented by EPA inspections. By not spending the money initially to achieve compliance, the violator accrued an economic benefit.

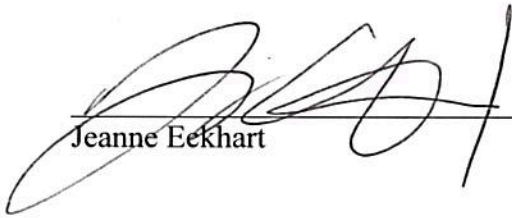
35. One-time non-depreciable expenditures are the type of non-depreciable expenditures (such as the purchase of land) that the violator should have implemented but did not do so. In this case, I estimated the one-time non-depreciable expenditures costs for the costs of the oil and gas lease for extraction of these resources by the operator. I estimated the one-time non-depreciable expenses to be \$2,000 for each date of violation documented by EPA inspections. The violator gained an economic benefit by not putting to use these types of non-depreciable expenditures.

36. Annual recurring costs are the type of expenditures which occur on a regular basis associated with environmental control measures. In this case, I estimated these annually reoccurring costs to be costs associated with labor, and operations and maintenance needs on the lease, including daily operations. I estimated the annually reoccurring costs to be \$2,000 for each data of violation documented by EPA inspections. By not spending the money on an annual basis to achieve compliance, the violator accrued an economic benefit.

37. In this matter, I calculated the economic benefit for the penalty for each violation date documented by EPA inspections, including March 16, 2018, March 20, 2018, April 12, 2018, and April 26, 2018. The total economic benefit calculated was \$1,120, which factored into the penalty calculation.

D. Conclusion

38. In calculating the penalty based on the violation, I used the statutory factors. These include: the nature, circumstances, extent and gravity of the CWA violation, the violator's ability to pay, any prior history of CWA violations, the degree of culpability, the economic benefit resulting from the violation and such other matters as justice may require. The penalty I calculated was \$64,500.

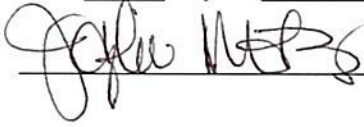


Jeanne Eckhart

Executed this 18th day of December 2019 in Dallas, Texas.

Subscribed and sworn to before me, the undersigned Notary Public,

This 18th day of December, 2019



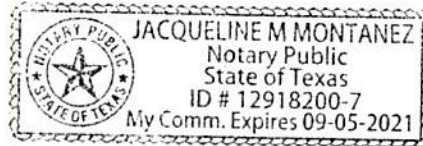


Exhibit 11

Ability to Pay Analysis

Partnership: Tax Form 1065

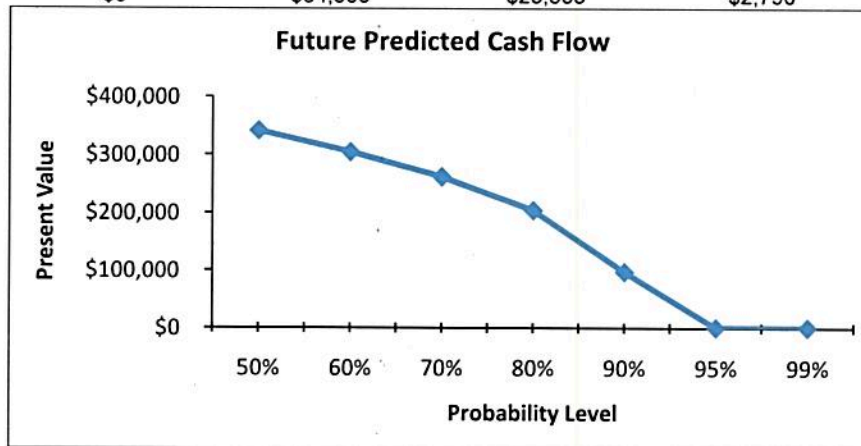
Run Name: Diamond 3S, LLC -CWA

Penalty Amount: \$64,500 (2019 dollars)

Reinvestment Rate:	0
Inflation & Discount Rates	1.7% & 6.9%
Weighted-Average Smoothing Constant:	0.3
Marginal Income Tax Rate:	42.6%
No. of Years of Considered Future Cash Flow:	5

Your model version may be outdated: go to www.epa.gov/enforcement/penalty-and-financial-models

Probability of Cash Flow	Summary of Predicted Cash Flow <i>all tabular figures expressed in Dollars</i>				
	Total Generated After-Tax Cash Flow	Penalty Payment	After-Tax Initial Pollution Control Expenditures	Present Value of Annual Pollution Control Costs	Cash Flow Net of Penalty and Compliance Costs
50%	\$341,764	\$64,500	\$23,533	\$2,790	\$250,941
60%	\$304,288	\$64,500	\$23,533	\$2,790	\$213,465
70%	\$261,753	\$64,500	\$23,533	\$2,790	\$170,930
80%	\$204,177	\$64,500	\$23,533	\$2,790	\$113,354
90%	\$97,193	\$64,500	\$23,533	\$2,790	\$6,370
95%	\$0	\$64,500	\$23,533	\$2,790	(\$90,823)
99%	\$0	\$64,500	\$23,533	\$2,790	(\$90,823)



Conclusions

(All figures are expressed as of 2019.)

- ABEL estimates a 90% probability that Diamond 3S, LLC can currently afford a \$64,500 penalty after meeting total Pollution Control Expenditures of \$26,323 (see below for detailed breakout of expenditures).
- ABEL estimates a 70% probability that Diamond 3S, LLC could afford to pay a penalty of \$235,430 after meeting total Pollution Control Expenditures of \$26,323 (see below for detailed breakout of expenditures).
- This is based only on cash flow the firm is projected to generate in the next 5 years. (Additional ability to pay could follow from an examination of unnecessary expenses, assets unrelated to business operations, and/or other sources.)
- EPA typically employs the 70% probability level for determining ability to pay, but the litigation team must ultimately determine the appropriate cutoff for the case.
- For the payment schedule (which does not affect the ability to pay), 3 Yearly payments (at a 6.9% interest rate) of \$22,949.43 are the equivalent of the lump-sum affordable amount.
- Depreciation is a high percentage of cash flow: verify reinvestment rate's appropriateness.

Note that the owners may be individually liable for this partnership's liabilities.

See the ABEL User's Manual or help system for further details.

Pollution control expenditures include \$18,094 for depreciable capital investment, \$17,826 for tax-deductible one-time expenditure, \$0 for non-tax-deductible one-time expenditure, and \$1,080 for annually recurring costs.