



UNITED STATES  
 ENVIRONMENTAL PROTECTION AGENCY  
 REGION 6  
 DALLAS, TEXAS



	)	
IN THE MATTER OF:	)	
	)	
ORYX ENERGY COMPANY	)	
STEPHENS COUNTY, TEXAS	)	DOCKET NO. OPA-97-012
PONTOTOC COUNTY, OKLAHOMA	)	
LAFOURCHE PARISH, LOUISIANA	)	
	)	
RESPONDENT	)	
	)	

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**ORDER DIRECTING ENTRY OF RESPONDENT'S DEFAULT AS TO LIABILITY**

This is a proceeding for the assessment of a Class I administrative penalty under Section 311(b)(6)(A) and (B)(i) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6)(A) and (B)(i). This Order directs the entry of the Respondent's default as to liability under proposed 40 C.F.R. § 28.21(a), and orders the Complainant to submit written argument regarding the assessment of an appropriate civil penalty under proposed 40 C.F.R. § 28.21(b).

**A. STATUTORY AND REGULATORY BACKGROUND**

The overall objective of the CWA is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). As part of the effort to satisfy the CWA's comprehensive objective, Congress prohibited the discharge of oil in an amount harmful to public health or welfare or the environment into or upon navigable waters or adjoining shorelines. 33 U.S.C. §

1321(b). EPA regulations identifying discharges of oil that may be harmful to public health or welfare or the environment are found at 40 C.F.R. Part 110.

Section 311 of the Clean Water Act specifies measures designed to address prohibited discharges of oil. Section 311(b)(6)(A)(i) of the CWA provides that "any owner, operator, or person in charge of any vessel, onshore facility, or offshore facility from which oil . . . is discharged in violation of paragraph (3) [Discharged into or upon the navigable waters of the United States or adjoining shorelines], may be assessed a Class I . . . civil penalty by . . . the [EPA] Administrator." 33 U.S.C. § 1321(b)(6)(A)(i). Before assessing a Class I civil penalty, the EPA Administrator must provide the person to be assessed a penalty written notice of the proposed penalty and the opportunity to request a hearing within 30 days of receipt of such notice. 33 U.S.C. § 1321(b)(6)(B)(I).

Class I CWA penalty actions are governed by procedures set forth in the proposed rules for Non-Administrative Procedures Act (Non-APA) cases, proposed 40 C.F.R. Part 28. 56 Fed.Reg. 29996 (July 1, 1991).<sup>1</sup> Specifically, proposed 40 C.F.R. § 28.20(a) requires the respondent to respond within 30 days of receipt of an administrative complaint. This 30 day period to respond may be enlarged for 90

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<sup>1</sup>Citations to the proposed rules will be to the proposed Code of Federal Regulation citations, rather than to the Federal Register.

additional days under proposed 40 C.F.R. § 28.20(b). In addition, parties are afforded the opportunity to be heard on liability and penalty issues in accordance with proposed 40 C.F.R. § 28.26. However, if a timely response to an administrative complaint is not filed, default proceedings under proposed 40 C.F.R. § 28.21 may be appropriate.

**B. PROCEDURAL HISTORY**

On June 24, 1997, the Complainant filed an administrative complaint against the Respondent, alleging that the Respondent unlawfully discharged oil into or upon the waters of the United States or adjoining shorelines in a quantity that may be harmful, in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3). The administrative complaint seeks a \$7,200 civil penalty. On July 17, 1997, the Respondent filed a request for a ninety (90) day extension of time to respond. However, no stipulation for extension of time was ever signed by the Parties, as required by proposed 40 C.F.R. § 28.20(b)(1). Over ninety (90) days past, and no response was filed by the Respondent.<sup>2</sup>

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<sup>2</sup>Because the Complainant failed to file the return receipt green card, the exact date the Respondent received the administrative complaint is unknown. However, the Respondent did receive the administrative complaint as evidenced by its July 17, 1997, letter. Assuming that the Respondent received the Complaint on July 1, 1998, and received a 90 day extension of time to file its Response (which would have been due August 1, 1998), the Response would have been due November 1, 1998.

On December 23, 1997, the Complainant filed a Motion to File Amended Administrative Complaint. The basis for the motion was that the original administrative complaint was not certified by an EPA attorney, as required by proposed 40 C.F.R. § 28.2(a)(5). On January 9, 1998, this Court granted the Complainant's motion. The January 9, 1998, Order also required the Respondent to file its response within thirty (30) days of receipt of the Order, as required by proposed 40 C.F.R. § 28.20. The two return receipt green cards<sup>3</sup> shows that the January 9, 1998 Order was received by the Respondent. No date is indicated on the green cards when the Respondent actually received the Order, but the Regional Hearing Clerk received the green cards back from the Respondent on January 16 and 20, 1998. However, no response was ever filed by the Respondent. Therefore, the default procedures set forth in proposed 40 C.F.R. § 28.21(a) apply.

Proposed 40 C.F.R. § 28.21(a) provides the following:

If the respondent fails timely to respond pursuant to § 28.20(a) or (b) of this part or the Presiding Officer determines that the respondent's conduct warrants imposition of the sanction of default as to liability, the Presiding Officer, on his own initiative, shall immediately determine whether the complainant has stated a cause of action.

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<sup>3</sup>The Order was sent to the Respondent's President, CEO & Chairman, as well as the Environmental, Health & Safety Manager. The Environmental Manager was the person who requested the 90 day extension.

Proposed 40 C.F.R. § 28.20(d) also provides that:

Each uncontested allegation in the administrative complaint as to liability is deemed admitted by the respondent . . . by the respondent's failure in a timely response to administrative complaint.

Despite the Respondent's initial failure to deny the allegations in the original administrative complaint, this Court specifically ordered the Respondent to file a Response within thirty (30) days of receipt of the January 9, 1998 Order. The Respondent failed to do so. Therefore, this Court concludes that the Respondent's conduct warrants the entry of default as to liability.

**C. ELEMENTS OF THE CAUSE OF ACTION**

The Complainant has alleged that the Respondent unlawfully discharged oil into or upon the waters of the United States or adjoining shorelines in a quantity that may be harmful, in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), on four separate occasions: January 2, 1997, February 11, 1997, March 1, 1997, and March 4, 1997. Section 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6)(A) provides that any owner, operator, or person in charge of any vessel, onshore facility, or offshore facility from which oil . . . is discharged in violation of Section 311(b)(3), 42 U.S.C. § 1321(b)(3), may be assessed a civil penalty by EPA. Therefore, the elements of liability which must be proven in order

for this Court to enter a default order as to liability, are as follows:

1. The Respondent is a "person", as that term is defined by Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7);

2. The Respondent was an "owner", "operator", or person in charge, of any "vessel", "onshore facility", or "offshore facility", as those terms are defined by Section 311(a)(3),(6), (7), and (10), 33 U.S.C. § 1321(a)(3),(6),(10), and (11);

3. From which "oil" was "discharged", as those terms are defined by Section 311(a)(1) and (2), 33 U.S.C. § 311(a)(1) and (2)];

4. Into or upon the "navigable waters" [defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7)] of the United States or adjoining shorelines;

5. In such quantities as may be harmful as determined by EPA regulation (40 C.F.R. § 110.3).

**D. ANALYSIS OF ADMINISTRATIVE COMPLAINT**

Based on the foregoing, the Complainant has stated a cause of action. The Complainant alleged the following in the administrative complaint:

1. The Respondent is a corporation and a person as defined by Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7). Amended Administrative Complaint ¶¶ 3 - 4.

2. The Respondent was the owner/operator of four production facilities and associated pipelines located in Stephens County, Texas (Eliasville and Breckenridge facilities), Pontotoc County, Oklahoma, and Lafourche Parish, Louisiana, and these four facilities were "onshore facilities" as that term is defined by Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2. Amended Administrative Complaint ¶¶ 5 - 12.

3. That oil was discharged from the onshore facilities on four separate occasions:

A. Count 1 - January 2, 1997 - approximately two (2) barrels of oil (Eliasville facility);

B. Count 2 - February 11, 1997 - approximately four (4) barrels of oil (Pontotoc County facility);

C. Count 3 - March 1, 1997 - approximately five (5) barrels of oil (Lafourche facility); and

D. Count 4 - March 4, 1997 - approximately fifteen (15) barrels of oil (Breckenridge facility).

Amended Administrative Complaint ¶¶ 15, 21, 27, and 33.

4. Into waters of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1, namely:

A. Count 1 - Into or upon an unnamed creek and adjoining shorelines, which is a tributary to the Brazos River, in Stephens County, Texas (Eliasville facility);

B. Count 2 - Into or upon an unnamed overflow pond to Byrd's Mill Creek and adjoining shorelines in Pontotoc County, Oklahoma (Pontotoc facility);

C. Count 3 - Into or upon Chacahoula Swamp in Lafourche Parish, Louisiana (Lafourche facility); and

D. Count 4 - Into or upon an unnamed tributary to Gonzalez Creek, which is a tributary to the Brazos River, and adjoining shorelines in Stephens County, Texas (Breckenridge facility).

Amended Administrative Complaint ¶¶ 15, 16, 21, 22, 27, 28, 33, and 34.

5. The discharges of oil were in such a quantity that has been determined harmful under 40 C.F.R. § 110.3, namely the discharges of oil caused a film or sheen upon or discoloration of the surface of the water or adjoining shorelines and/or a sludge or emulsion to be beneath the surface of the water or upon the adjoining shoreline.

Amended Administrative Complaint ¶¶ 17, 18, 23, 24, 29, 30, 35, and 36.

Pursuant to proposed 40 C.F.R. § 28.20(b), these allegations have been admitted by the respondent due to its failure to timely respond to these allegations in the administrative complaint. Therefore, the Complainant has alleged a cause of action for a violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and an Order of Default as to Liability will be entered against the Respondent.

**E. ENTRY OF DEFAULT AS TO LIABILITY**

Having determined that the Complainant has stated a cause of action, this Court directs the Regional Hearing Clerk to enter the



Respondent's default as to liability in the administrative record of this proceeding. Proposed 40 C.F.R. § 28.21(a)(1).

Upon entry of this Order, the aforementioned paragraphs of the administrative complaint (Section D, *supra*) shall be deemed recommended findings of fact and conclusions of law. Proposed 40 C.F.R. § 28.21(a)(1).

**F. DETERMINATION OF REMEDY**

In accordance with proposed 40 C.F.R. § 28.21(b), Complainant shall submit to the Regional Hearing Clerk by **March 22, 1999** (and serve on the Respondent), written argument (with any supporting documentation), regarding the assessment of an appropriate civil penalty. The argument shall be limited to the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require. The Respondent may file a response to the Complainant's submission by **April 12, 1999**.

Dated this 19<sup>th</sup> day of February, 1999.

/S/  
Evan L. Pearson  
Presiding Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_\_\_ day of February, 1999, I served true and correct copies of the foregoing Order Directing Entry of Respondent's Default as to Liability on the following in the manner indicated below:

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED \_\_\_\_\_**

Robert Kaiser  
President, CEO & Chairman  
Oryx Energy Company  
13155 Noel Road  
Dallas, Texas 75240-5067

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED \_\_\_\_\_**

Nancy Sahr  
Environmental, Health and Safety Manager  
Oryx Energy Company  
13155 Noel Road  
Dallas, Texas 75240-5067

**INTEROFFICE MAIL**

Edwin M. Quinones  
Superfund Branch (6RC-S)  
Office of Regional Counsel  
U.S. EPA - Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

/S/ \_\_\_\_\_  
Lorena S. Vaughn  
Regional Hearing Clerk