

IN THE MATTER OF: )  
 )  
Altec Petroleum Group, Inc. )  
 )  
Respondent )  
 )

FILED  
2010 OCT 22 PM 1:54  
Docket No. CWA 06-2010-1703  
REGIONAL HEARING CLERK  
EPA REGION VI

MOTION FOR DEFAULT AS TO PENALTY AND LIABILITY

Altec Petroleum Group, Inc., Respondent, has failed to submit an Answer and Request for a Hearing in response to the Administrative Complaint (“Complaint”) filed by the Complainant on January 25, 2010. The Complaint was issued under Section 309(g) of the Clean Water Act (herein “the CWA” or the “Act”), 33 U.S.C. § 1319(g) for violations of Section 301 of the CWA, 33 U.S.C. 1311. Due to the Respondent’s failure to submit an Answer, pursuant to 40 C.F.R. § 22.17, the United States Environmental Protection Agency Region 6 (“EPA” or “Complainant”) files this Motion for Default requesting issuance of a Default Order against the Respondent. In addition to seeking liability for violations of the CWA, the Complainant is seeking civil penalties in the amount of \$14,700. In support of this motion, the Complainant states and argues as follows:

**I. PROCEDURAL BACKGROUND**

**1. Governing Procedures.** This proceeding is governed by 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. § 22.1 et seq.

**2. Filing of the Complaint.** In accordance with 40 C.F.R. §§ 22.5(a) and 22.14, the original Complaint and one copy was filed with, and received by, the Regional Hearing Clerk, EPA Region 6, on January 25, 2010.

**3. Service of the Complaint.** In accordance with 40 C.F.R. § 22.5(b), the Complainant delivered a copy of the Complaint, via certified mail with return receipt requested, to the Respondent, on July 10, 2009. The Complaint was mailed to: Mr. Patrick Adams, Altec Petroleum Group, Inc., 323 County Road 3460, Pawhuska, Oklahoma 74056.

**4. Proof of Service.** Altec Petroleum Group, Inc., received a copy of the original Complaint. Someone did sign it and the name appears to begin with a “C”. However, the name is illegible. Nevertheless, somebody from Respondent’s company did sign the green receipt card, Article No. 7008 0150 0003 0411 7294. “2-1-10” is in the space for “date of delivery.” Under 40 C.F.R. § 22.5(b)(1)(iii), the Complainant respectfully requests the Presiding Judicial Officer to admit into evidence, the attached green receipt card dated February 1, 2010, as proof of service. See *In re Haydel*, 2000 WL 436240, Docket No. CWA-VI-99-1618 (EPA Region VI) (Certified mail return receipt card is adequate proof of service). The individual whose signature appears on the green receipt

cards for the Complainant is a proper representative of Altec Petroleum Group, Inc. under 40 C.F.R. § 22.5(b). *See also Katzen Bros., Inc. v. U.S. EPA*, 839 F.2d 1396, 1399 (10<sup>th</sup> Cir. 1988) (Individual authorized to pick up mail, such as personal secretary, is considered a proper business representative to satisfy service to Respondent.).

**5. Answer to the Complaint.** In accordance with 40 C.F.R. § 22.15, the Respondent must file an answer to the complaint with the Regional Hearing Clerk, Region 6, within thirty (30) days after service of the complaint if the Respondent: contests any material fact upon which the complaint is based; contests the proposed penalty, compliance, or corrective action order; or contends they are entitled to judgment as a matter of law.

**6. Filing of the Answer.** As of October 22, 2010, the Respondent has not filed with the Regional Hearing Clerk, an Answer to the Complaint.

**7. Request for Extension.** In accordance with 40 C.F.R. § 22.7(b), a party may request from the Presiding Judicial Officer an extension of time for filing any document. As of October 22, 2010, the Respondent has not filed with the Regional Hearing Clerk, Region 6, any request for an extension of time to file a response.

**8. Time Elapsed Since Service of Complaint.** The Complainant EPA has afforded the Respondent every opportunity to respond to the Complaint, however, as of October 22, 2010, approximately 263 days have passed since the Complaint was served without a response from the Respondent. Complainant has filed one status report with the Regional Hearing Clerk and a copy was mailed to the Respondent. The status report stated that Complainant intends to file a Motion for Default. Complainant had filed a previous Complaint against Respondent for a different violation on May 20, 2008. The May 20, 2008, complaint was amended and filed on July 15, 2009. Complainant filed a Motion for Default on December 22, 2009, in that case because Respondent did not file an Answer. Based on Respondent's previous failure to file an Answer, Complainant does not believe that Respondent will file one in this case.

## II. STATUTORY AND REGULATORY AUTHORITY

**9.** Section 309(g) of the CWA, 33 U.S.C. § 1311, authorizes the Administrator of the United States Environmental Protection Agency (EPA) to issue a complaint for violations of the CWA.

**10. Prima Facie Case – Liability.** In order 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* Complaint No. CWA-06-2007-1974),

the Respondent violated Section 301, 33 U.S.C. § 1311. Specifically, the following elements of the Complainant's cause of action have been met:

- a. Respondent is a corporation incorporated in the State of Oklahoma and as such is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
- b. Respondent owned or operated the oil and gas production facility at Latitude 36° 53.98' North and Longitude 96° 7.49' and was therefore an "owner or operator" within the meaning of 40 C.F.R. § 122.2.
- c. The facilities were "point sources" of "discharges" of "pollutants," specifically oil field brine, to the receiving waters of a tributary of Hulah Lake, which is a "waters 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 facilities which acted as point sources of discharges of pollutants to waters of the United States, the Respondent and the facility are subject to the Act 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 to "waters of the United States" is a non-permitted discharge.
- f. On April 13, 2009, the facility was inspected by an EPA field inspector. The inspector observed that oil field brine had been discharged from the facility.

**11. 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 replied to the Complaint filed on January 25, 2010. Thus, the Respondent has, by default, admitted all of the facts alleged in the amended 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).

**12. Finding of Respondent Liability.** Subsequently, under 40 C.F.R. § 22.16(c), the Complainant requests the Presiding Judicial Officer issue a Default Order against the

Respondent, Altec Petroleum Group, Inc., finding the Respondent liable for violations of the CWA as previously stated.

#### IV. PENALTY ASSESSMENT

13. **Civil Penalty.** In addition to liability, the Complainant is seeking assessment of a civil penalty in the amount of \$14,700 for violation of 301 of the CWA, 33 U.S.C. § 1311.

14. **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 EPA 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

15. **Affidavit Attached for Penalty Calculation.** Attached to this Default Motion is the Affidavit of Matthew Rudolph. 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 EPA respectfully requests the Presiding Judicial Officer to admit into evidence, the attached Affidavit of Matthew Rudolph, as evidence to support the Complainant's penalty amount.

16. **Assessment of Civil Penalty.** Under the facts outlined above and pursuant to 40 C.F.R. § 22.27(b), the Complainant requests the Presiding Judicial Officer approve assessment of a civil penalty in the amount of \$14,700 against the Respondent for violations of the CWA.

**THEREFORE**, in accordance with 40 C.F.R. § 22.1 et seq., the Complainant moves that, based on the aforementioned facts and law, the Presiding Judicial Officer issue a Default Order in this matter, enter a judgment against the Respondent, and Order that the Respondent pay the civil penalty proposed in the amended Complaint.

Respectfully submitted,



Ellen Chang Vaughan  
Assistant Regional Counsel  
Region 6, 6RC-EW  
1445 Ross Ave.  
Dallas, TX 75202  
[Chang-vaughan.ellen@epa.gov](mailto:Chang-vaughan.ellen@epa.gov)  
(214) 665-7328 (Tel.)  
(214) 665-3177 (Fax)

Oct. 22, 2010  
Date

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Motion for Default Order was hand-delivered and filed with the Regional Hearing Clerk, EPA Region 6, 1445 Ross Ave., Dallas, Texas 75202-2733, and a true and correct copy of such Motion for Default Order was delivered in the following manner, on this 22 day of October 2010, addressed to the following:

Via certified mail:

Jackie Allen

Mr. Patrick Adams  
President  
Altec Petroleum Group, Inc.  
323 County Road 3460  
Pawhuska, OK 74056