

UNITED STATES
ENVIRONMENTAL PROTECTIONS AGENCY
REGION 6
DALLAS, TEXAS

FILED

2011 OCT 13 PM 1:34
REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of:)
)
Altec Petroleum Group, Inc.,) CWA-06-2008-1832
)
Respondent.)

PARTIAL ACCELERATED DECISION

This is a proceeding under Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g) for violation of Section 301 of the CWA, 33 U.S.C. § 1311. The proceeding is governed by procedures set forth in the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“CROP”) codified at 40 C.F.R. Part 22.

Complainant herein, the Director of the Compliance Assurance and Enforcement Division of EPA Region 6, has filed a Motion for Accelerated Decision as to Both Liability and Penalty (“Motion for Accelerated Decision”), seeking an order finding Respondent, Altec Petroleum Group, Inc. (Altec),¹ liable for violating the Clean Water Act and assessing a civil penalty in the amount of \$19,500.00 against it. Because the record before me was somewhat ambiguous, I ordered that it be supplemented by an EPA enforcement staff declaration in accordance with 40 C.F.R. 22.20(a). On July 12, 2011, Complainant filed such a declaration and served a copy on Respondent by mail. Altec has responded to neither motion nor declaration. Nor has it filed an answer satisfying the requirements of 40 C.F.R. §22.15(b), a prehearing exchange, or anything

else other than a request for a hearing and a joint status report prepared by Complainant. Respondent is represented by its corporate president and is thus essentially a *pro se* litigant.

FACTS

On September 13, 2007, John Rempe, a biologist employed by the Oklahoma Department of Wildlife Conservation, informed EPA Region 6 of concerns that seepage from reserve pits at a drill site in the Osage County Western Wall Wildlife Management Area had contaminated a nearby creek. Photographs Mr. Rempe took and subsequently supplied Region 6 showed shallow reserve pits had been created by constructing a berm of native soil. The reserve pit or pits depicted in those photographs contain(s) grey material and water. The pits were unlined, but one of them contained a large sheet of plastic that had been laid along the pit-side bottom of the berm and weighted down with rocks, an apparent effort to control a leak. The water's surface in the creek had a visible oil sheen.

On September 19, 2007, Daniel P. Lennington, an attorney employed by the Oklahoma Attorney General's Office, wrote Mr. Patrick S. Adams, Altec's President. Mr. Lennington informed Mr. Adams Altec had unlawfully entered the wildlife management area, had caused significant environmental damage, was expressly prohibited from reentering the wildlife management area, and must cease and desist its operation.

Following a telephone call with Mr. Adams, Mr. Lennington wrote Mr. Adams on the next day, providing Altec limited permission to reenter the wildlife management area

...to cleanup the site at Altec's expense and abate any and all unsafe conditions as soon as possible. You agreed to (1) finish the

¹ According to its website, Altec "is a conservative development and production company that was formed to explore and produce oil and gas primarily in Osage County, Oklahoma."

casing, (2) cement the casing, (3) cap the well, as soon as possible...After this is completed, you agreed to work with the Department to cleanup the site. This will include closing the pits, removing contaminated soils, and taking any other actions necessary to cleanup the site and correct the damage Altec has done....[T]here will be no further operations at the site unless and until this matter is completely resolved with the Department and only if the Department specifically agrees to allow you to continue operations at the site....

Cleanup activities and discussions between Altec and the Oklahoma Department of Wildlife Conservation were apparently underway before EPA was contacted and before the Attorney General corresponded with Altec. Invoices Altec submitted to EPA enforcement staff suggest it commenced the operations identified in Mr. Lennington's letter no later than September 6, 2007, when a contractor "[c]leaned up [a] spill" at the site.²

EPA inspector Kent Sanborn arrived at the site on September 21, 2007 and observed the reserve pits had been backfilled with soil and several portions of the nearby creek had been pumped dry. Somebody, not identified in Mr. Sanborn's inspection report, informed him that

the pits began leaking out the bottom along the rock shelf they were constructed on. They were not lined. Brine entered the small creek over a period of weeks over the objections of the State...

Mr. Sanborn observed the dirt with which the pits had been backfilled was wet and "mushy" in places, indicating the fill had been deposited over something wet. He also observed wet areas on the ground between one of the pits and a nearby creek, indicating a pathway from which liquid had flowed downhill about 470 feet from the pit to the creek, which was a tributary

² Altec provided EPA with invoices from Triple S Oilfield Services, Inc., indicating that contractor "cleaned up spill" with a tank truck and pit pump on September 6, 2007. Other invoices indicate Triple S returned to the site and "sucked out "hole" October 8, 2007 and again on October 15, 2007. The "hole" referenced in those latter invoices and in EPA inspection

to the South Fork of Pond Creek, tributary to Lake Hulah, an impoundment of the Caney River, an interstate navigable-in-fact body of water. It appeared to Mr. Sanborn that the creek was contaminated with brine and field testing confirmed the creek contained total soluble salts at the point of entry of 30,000 ppm and 25,000 ppm about 200 yards downstream. Lab analyses of samples taken by Mr. Rempe subsequently confirmed there were substantially elevated concentrations of total soluble salts in the creek and also in the dirt with which the pits had been backfilled.

Mr. Sanborn verbally advised Altec to construct a catch basin between the backfilled pits and the creek to contain further discharges of pollutants to the creek so they could be collected and hauled by truck to an appropriate disposal facility. No catch basin was constructed while Mr. Sanborn was onsite, however, and his inspection report noted "rain is expected today." Following telephone conversations between EPA enforcement staff and Mr. Patrick Adams, President of Altec, EPA issued a compliance order to Altec pursuant to Section 309(a) of the Clean Water Act (CWA) on November 16, 2007. That order demanded that Altec (1) cease discharging pollutants, (2) remove brine from the creek, (3) install a catch basin to intercept further discharges from the backfilled reserve pits before they reached the creek, and (4) neutralize or remove the contaminated soils on the site.

On March 10, 2008, Mr. Sanborn again inspected the site. He found that the entire site had been graded and "worked with gypsum." He found no evidence that Altec had constructed a catch basin to intercept leakage or runoff from the backfilled reserve pits and found total soluble

reports is a relatively deep part of the creek that apparently served as a natural sump from which Altec pumped water in efforts to minimize the effects of a discharge or discharges.

salts in the creek's "first hole" was between 3700 and 6700 ppm. Downstream of the hole, he found total soluble salts were between 1200 and 2200 ppm.

LIABILITY

No EPA inspector witnessed the discharges of pollutants on which the Complaint herein is premised, but uncontested circumstantial evidence introduced in this matter establishes that Respondent discharged pollutants to the small tributary of Pond Creek on at least two occasions. One of those occasions is not necessarily the same one on which Complainant bases allegations of liability, however. Complainant's description of the discharges it alleges is somewhat vague, but appears based on a view Altec's reserve pits "seeped" pollutants over an extended period of time before EPA's first site inspection. That view is apparently based on a verbal description some unidentified person at the site provided Mr. Sanborn during his September 21, 2007 inspection. Although hearsay is admissible in this matter, it is of little weight in the absence of some reason to believe it reliable.

A Record of Communication reflecting a March 12, 2008 telephone conversation between EPA enforcement staff and Altec's President, suggests an occurrence more consistent with the photographic evidence in the record. In pertinent part, it states:

Mr. Adams stated he didn't agree with the EPA and the inspection findings from the original inspection conducted on 9/21/07...He informed me the original well was drilled with air and there was no salts present on the site, and the reason why there is so much salt on the site was because he flushed the location and the creek adjacent to the location with water which he pulled from a nearby creek which he thought was fresh but that water was also contaminated with brine....

Mr. Adam's statement that the well was "drilled with air" suggests Altec used a wireline rather than rotary drilling rig on this site, indicates to me the reserve pits contained only drill

cuttings rather than drilling muds that might have been contaminated with salts during their transit through the nether regions.

Mr. Adam's statement is consistent with the photographs Mr. Rempe provided EPA enforcement staff in this matter (Exhibits 1, 3 - 7³), showing a tank truck onsite during cleanup actions and bags of cuttings that had presumably been removed from the reserve pits. Those photographs also show water and grey material, likely fine particle drill cuttings, in the pits and that plastic sheeting had been used in an apparent attempt to stanch observed flow emerging beneath the berm of one reserve pit. They likewise show that the briny water, containing sufficient formation oil from cuttings to cause a visible sheen, had reached the creek. Mr. Rempe's photographs are undated, but I conclude he took them shortly after a discharge of pollutants, including brine contaminated water from the nearby creek, occurred when Altec attempted to wash down the pits prior to backfilling them at the behest of the Oklahoma Department of Wildlife Conservation. That discharge likely occurred on September 6, 2007, as shown by the invoice from Altec's contractor for "[c]leaned up spill" that date.

Complainant's allegation that a second day of discharge occurred is based on Mr. Sanborn's November 8, 2008 inspection report, which noted no catchment basin had been constructed between the backfilled pits and the creek to intercept storm water discharges from the area contaminated by Altec's cleanup actions and that the creek contained even higher concentrations of soluble salts than on September 21, 2007. The file contains no evidence that it actually rained at the site between the two inspections, but I presume it rained there at least once

³ Government Exhibit 2 is a photograph that appears to have been taken at a later date, after the reserve pits had been backfilled and worked with lime.

over more than a year's time in the absence of evidence to the contrary. I thus find Altec discharged pollutants to the small creek on at least two days *in toto*.

Because it flowed at least seasonally (6 to 8 months per year according to Mr. Rempe, who was presumably familiar with conditions on the State wildlife management area) and was tributary to traditionally navigable waters (Pond Creek, Hulah Lake, and the Caney River), the small creek that received discharges from Altec's site was a "navigable water" as defined by the Clean Water Act and explained by the plurality opinion in *Rapanos v. United States*, 547 U.S. 715 (2006). Hence, the addition of contaminated wash water to that creek during reserve pit closure and the subsequent addition of storm water from the contaminated drill site to that creek were unauthorized discharges of pollutants violating Section 301 of the Clean Water Act.

PENALTY

Complainant seeks an administrative penalty of \$16,000.00, claiming that amount is justified by application of the statutory factors listed in Clean Water Act Section 301(g) and EPA's penalty policy. Its breakdown of that amount is somewhat opaque and not entirely consistent with my findings of fact with regard to the first discharge. Complainant may thus wish to reconsider the penalty it proposed in light of those findings.

In proposing the penalty amount, it moreover appears Complainant may have considered factors for which the record currently offers little or no support. Complainant apparently considered Altec's failure to report its discharges relevant to penalty amount, for instance, but the file includes no indication of why Altec may have been subject to any sort of reporting obligation. The record is also somewhat equivocal on the degree of site access the State provided Altec after its initial clean up attempt or on whether Altec sought its permission to

construct and maintain the storm water catch basin as advised by Mr. Sanborn and ordered by Complainant, potentially affecting the issue of Altec's possible recalcitrance for penalty assessment purposes.

Although I am granting an accelerated judgment on the issue of liability, I am denying Complainant's motion to the extent it requests an accelerated penalty assessment. Rather than assessing a penalty on the basis of the current record, I am scheduling a hearing at which Complainant and Respondent may submit additional evidence and argument on the amount of penalty appropriate in this matter.

ORDER

Judgement herein is granted on the issue of liability only. Hearing on penalty amount is set for 9:00 AM on November 16, 2011 in the Hearing Room (Room 13J11) in the offices of EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75052. Documentary evidence to be introduced or memoranda to be filed at the hearing shall be provided to the opposing party by mail or email no later than November 3, 2011.

October 19, 2011

A handwritten signature in black ink, appearing to read 'Pat Rankin', written over a horizontal line.

PAT RANKIN
Regional Judicial Officer

CERTIFICATE OF SERVICE

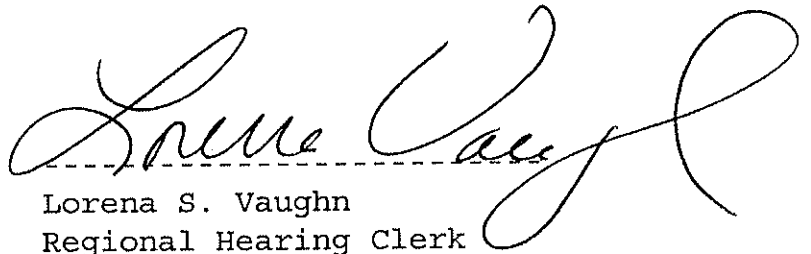
I, Lorena S. Vaughn, the Regional Hearing Clerk, do hereby certify that a true and correct copy of the Partial Accelerated Decision for CWA 06-2008-1832 was provided to the following on the date and in the manner stated below:

Patrick S. Adams
President
Altec Testing & Engineering, Inc.
6035 Freemont Street
Riverside, CA 92504

CERTIFIED MAIL

Lorraine Dixon
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202

INTEROFFICE MAIL



Lorena S. Vaughn
Regional Hearing Clerk

10-13-11

Date