

IN THE MATTER OF:)
)
Altec Petroleum Group, Inc.) Docket No. CWA-06-2010-1703
)
Respondent)
)

DECLARATION OF MATTHEW RUDOLPH

1. I, MATTHEW RUDOLPH, make the following statement truthfully from personal knowledge, under penalty of perjury, in accordance with 28 U.S.C. § 1746.
2. I make this statement in my capacity as an environmental engineer employed in the Water Resources section of the Compliance Assurance Enforcement Division of the United States Environmental Protection Agency, Region 6 (“EPA”).
3. I joined the Water Resources section in May 2003. My job duties are that of an enforcement officer and inspector. As such, I am responsible for activities regarding the onshore oil and gas industry oil and gas operations and determining if facilities in this industry are in compliance with the Clean Water Act (CWA) and the National Pollutant Discharge Elimination System (NPDES) program.
4. I am one of the EPA, Region 6 enforcement officers assigned to review information related to the CWA at Altec Petroleum Group, Inc. (“Respondent”). In my capacity as an enforcement officer for EPA, I am familiar with the CWA.
5. 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.

6. Section 309(g)(2) authorizes the Administrator of EPA to assess administrative civil penalties of \$16,000 per day during which a violation continues, up to a maximum of \$37,500.
7. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits any person to discharge a pollutant from a point source to waters of the United States without a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.
8. Respondent owned or operated a oil and gas production facility (herein “the facility”) located at Latitude 36° 53.98’ North and Longitude 96° 7.49’ in Osage County, Oklahoma.
9. 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.
10. 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.
11. The Respondent does not have NPDES permit coverage to discharge pollutants from the facility to waters of the U.S.
12. On April 16, 2009, EPA sent Respondent a Cease and Desist Administrative Order ordering the Respondent to stop all discharges of pollutants from its facility.
13. On January 25, 2010, EPA filed an Administrative Complaint against Respondent seeking a penalty of \$14,700.

A. The Statutory Factors

14. 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 it 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.”

15. 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 report, I determined that there was at least one violation which occurred on or before April 13, 2009. The violation was evident based on the high salinity levels in the impacted water body. The statutory maximum penalty is \$16,000 per day per violation. For this case, the statutory maximum penalty was \$16,000.

16. Based on my analyses of the statutory factors for this case, I calculated a penalty of \$14,700. Below I will go into more detail of my analyses of the statutory factors.

1. Gravity Component

17. 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

18. 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. When Congress enacted the CWA, its goal was to restore and maintain the chemical, physical and biological integrity of the U.S. waters and this was to be achieved partially by prohibiting the discharge of pollutants into waters of the U.S. Oil field brine is a pollutant associated with oil and gas production activities.

19. Brine is a byproduct of crude oil production. Oil field brine has high concentrations of calcium and sodium salts and since there is little market for brine, the brine must be disposed of properly. Brine is usually disposed of by underground injection into subsurface formations designated for brine disposal.

20. During the inspection, the inspector had observed that a brine pit located at the facility was full to the top and that brine was seeping out of the north and northwest sides of the pit directly into the tributary of Hulah Lake which is a waters of the U.S. The

tributary of Hulah Lake is a relatively permanent water body that flows for approximately 4,500 feet before it reaches Hulah Lake. Respondent's discharge of brine into surface waters may cause environmental harm because high salt concentration can kill vegetation and aquatic life. 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, had on aquatic life. (Ambient Water Quality Criteria for Chloride, February 1988.) From this research, EPA found that freshwater fish were affected from high concentrations of sodium chloride at levels of 230 parts per million (ppm) if exposed once every three years for a four day period (chronic exposure). Furthermore, freshwater fish were affected at levels of 860 ppm if exposed once every three years for a period of one hour (acute exposure). To put that into perspective with the case at hand, the brine levels taken at the discharge point of entry into the waters of the U.S. was determined to be 25,000 ppm total soluble salts (TSS). Clearly at these salinity levels and in reference to the 1988 research studies, this undermines the statutory purpose of the CWA which is to restore and maintain the chemical, physical and biological integrity of our waters.

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

21. The gravity component adjustment factor allows EPA to take into account 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

22. 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 particular 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 has not brought it up as a defense.

b. History of Violations

23. 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 November 16, 2007, EPA issued an Order for Compliance for similar violations of the CWA. Records indicate that the Respondent did not comply with the Order. On July 15, 2008, the EPA issued a Complaint to the Respondent addressing the violations. Respondent never filed an Answer, so Complainant filed a Motion for Default on December 22, 2009.

c. Degree of Culpability

24. 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 two Administrative Orders to the Respondent. The Respondent has put forth very little effort to comply with these Orders.

d. Such Other Matters as Justice May Require

25. 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. That particular factor was not used in the calculation of the penalty in this matter.

2. The Economic Benefit Component

26. 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.

27. 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. By not spending the money initially to achieve compliance, the violator accrued an economic benefit.

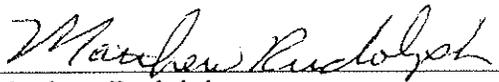
28. One-time non-depreciable expenditures are the type of non-depreciable expenditures (such as the purchase of land) that the violator should have implemented but did not do so. The violator gained an economic benefit by not putting to use these types of non-depreciable expenditures.

29. Annual recurring costs are the type of expenditures which occur on a regular basis associated with environmental control measures. These types of expenses are equivalent to operating and maintenance costs.

30. In this matter, I did calculate the economic benefit for the penalty.

D. Conclusion

31. 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 \$14,700.


Matthew Rudolph

Executed this 21st day of October 2010 in Dallas, Texas.

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

This 21st day of October, 2010



