

RECEIVED
U.S. E.P.A.

UNITED STATES
ENVIRONMENTAL PROTECTIONS AGENCY
REGION 6
DALLAS, TEXAS

FILED

2011 MAR 28 PM 2:43

MAR 10 PM 2:10

ENVIR. APPEALS BOARD

REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of:

Altec Petroleum Group, Inc.,

Respondent.

)
)
)
)
)

CWA-06-2010-1703

INITIAL DECISION AND DEFAULT ORDER

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, by discharging pollutants into waters of the United States without a permit. 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, the Director of the Compliance Assurance and Enforcement Division of United States Environmental Protection Agency Region 6, has filed a Motion for Default as to Penalty and Liability ("Motion for Default") seeking a default order finding Respondent, Altec Petroleum Group, Inc., liable for the violations of the CWA alleged in the Administrative Complaint ("Complaint") filed in this matter and assessing a civil penalty in the amount of \$14,700.00 against the Respondent. Pursuant to the CROP and the record in this matter and for the reasons set forth below, the Complainant's Motion for Default is hereby **GRANTED.**

BACKGROUND

The Complainant filed the Complaint in this matter on January 25, 2010. Section IV of the Complaint, entitled "Failure to File an Answer," provides information concerning

Respondent's obligations with respect to responding to the Complaint. Paragraph 14 of Section IV of the Complaint specifically states that:

If the Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, the Respondent must file an Answer to this Complaint within thirty (30) days after service of the Complaint

Paragraph 15 of Section IV of the Complaint advises that:

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 a hearing. Failure to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion

Paragraph 16 of Section IV of the Complaint warns that:

If the Respondent does not file an Answer to this Complaint within thirty (30) days after service, a Default Order may be issued against the Respondent pursuant to 40 C.F.R. § 22.17.

The Certificate of Service attached to the Complaint includes a certification that a copy of the Complaint was sent by certified mail, return receipt requested, on January 25, 2010, addressed to Mr. Patrick Adams, President, Altec Petroleum Group, Inc., 323 County Road 3460, Pawhuska, Oklahoma 74056. A certified mail return receipt (green card) bearing the docket number of this case and the word "complaint" filed with the Regional Hearing Clerk shows that an article was signed for at the address indicated in the Certificate of Service on February 1, 2010. A properly executed return receipt constitutes proof of service of the Complaint. Nothing in the return receipt suggests that it was not properly executed, thus proper service of the Complaint may be presumed under the CROP.

Respondent has not filed an answer to the Complaint as of the date of this Order.

On June 16, 2010, Complainant filed a Status Report with the Regional Hearing Clerk in which Complainant reported that Complainant had written a letter to Respondent on May 28,

2010, stating that the Complaint was issued on January 25, 2010, that an answer was required within thirty days of service, and that if no response was received within the next thirty days Complainant would file a motion for default within ninety days. The Certificate of Service attached to the Status Report indicates that a copy of the Status Report was served on Respondent by first class mail on June 15, 2010.

On October 22, 2010, Complainant filed its Motion for Default. The Certificate of Service attached to the Motion for Default shows that a copy of the Motion for Default was served on the Respondent by certified mail, return receipt requested, on October 22, 2010. A certified mail return receipt (green card) bearing the docket number of this case and the words "Motion for Default" filed with the Regional Hearing Clerk shows that an article was signed for at the address indicated in the Certificate of Service on October 27, 2010.

As of the date of this Order, the Respondent has not filed an answer to the Complaint or a response to the Motion for Default with the Regional Hearing Clerk.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Pursuant to sections 22.17(c) and 22.27(a) of the CROP, 40 C.F.R. §§ 22.17(c) and 22.27(a), and based on the entire record in this case, I make the following findings of fact and conclusions of law:
2. The Complaint was filed with the Regional Hearing Clerk on January 25, 2010.
3. A copy of the Complaint was mailed to Respondent by certified mail, return receipt requested, on January 25, 2010.
4. A return receipt shows that Respondent received a copy of the Complaint on February 1, 2010.

5. The Complaint in this proceeding was lawfully and properly served upon Respondent in accordance with 40 C.F.R. § 22.5(b)(1).
6. EPA notified the Osage Nation Environmental and Natural Resources Department of the issuance of the Complaint and afforded the Tribe an opportunity to consult with EPA concerning the assessment of an administrative penalty against Respondent as required by Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).
7. EPA notified the public of the filing of this Complaint and has afforded the public thirty days in which to comment on the Complaint and on the proposed penalty as required by Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A). At the expiration of the comment period, EPA had received no comments from the public.
8. Respondent did not file an answer to the Complaint within 30 days of receipt of the Complaint and has not filed an answer as of the date of this Order.
9. Respondent's failure to file an answer to the Complaint constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations. 40 C.F.R. § 22.17(a).
10. On October 22, 2010, Complainant filed its Motion for Default and served it on Respondent by certified mail, return receipt requested.
11. Complainant's Motion for Default was lawfully and properly served on Respondent. 40 C.F.R. § 22.5(b)(2).
12. Respondent was required to file any response to the Motion for Default within 15 days of service. 40 C.F.R. § 22.16(b).

13. Respondent did not file a response to Complainant's Motion for Default within 15 days of service and has not filed a response to the Motion for Default as of the date of this Order.
14. Respondent's failure to respond to the Motion for Default is deemed to be a waiver of any objection to the granting of the Motion for Default. 40 C.F.R. § 22.16(b).
15. Respondent is in default for failure to file a timely answer to the Complaint. 40 C.F.R. § 22.17(a).
16. Respondent is a corporation incorporated under the laws of the State of Oklahoma.
17. 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.
18. At all times relevant, the Respondent owned or operated an oil field facility located in Osage County, Oklahoma ("facility"), and was an "owner or operator" within the meaning of 40 C.F.R. § 122.2.
19. At all relevant times, the facility was a "point source" of a "discharge" of "pollutants," specifically oil field brine, to the receiving waters of a tributary of Hulah Lake, which is 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.
20. Because the Respondent owned or operated a facility which acted as a point source of a discharge of pollutants to waters of the United States, the Respondent and the facility were subject to the CWA and the National Pollutant Discharge Elimination System ("NPDES") program.
21. 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.

22. On April 13, 2009, the facility was inspected by an EPA field inspector. The inspector observed that oil field brine had been discharge from a pit located at the facility at Latitude 36° 53.98' North and Longitude 96° 7.49', to a tributary of Hulah Lake, located directly adjacent to and west of the pit. The inspector determined that the water located in the tributary of Hulah Lake was contaminated from brine discharges and measured 25,000 parts-per-million total soluble salts.
23. Each day of unauthorized discharge was a violation of Section 301 of the CWA, 33 U.S.C. § 1311.
24. Under Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), the Respondent is liable for a civil penalty in an amount not to exceed \$16,000 per day for each day during which a violation occurs or continues, up to a maximum of \$37,500.
25. The CROP provide, with respect to penalty assessment where a Respondent has been found in default, that the relief proposed in the Complaint shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act.
40 C.F.R. § 22.17(c).
26. The civil penalty of \$14,700.00 proposed in the Complaint and requested in the Motion for Default is not inconsistent with CWA or record in this proceeding.

DISCUSSION OF PENALTY

The relief proposed in the Complaint and requested in the Motion for Default includes the assessment of a total civil penalty of \$14,700.00 for the alleged violations. The CROP provide:

When the Presiding Officer finds that a default has occurred . . .
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 Act.

40 C.F.R. § 22.17(c).

With respect to penalty, the CROP provide that the Presiding Officer shall determine the amount of the civil penalty

. . . based on the evidence in the record and in accordance with any
penalty criteria set forth in the Act. The Presiding Officer shall
consider any civil penalty guidelines issued under the Act.

40 C.F.R. § 22.27(b).

The statutory factors I am required to consider in determining the amount of the civil penalty are

. . . the nature, circumstances, extent and gravity of the violation,
or violations, and, with respect to the violator, ability to pay, any
prior history of such violations, the degree of culpability, economic
benefit or savings (if any) resulting from the violation, and such
other matters as justice may require.

Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3).

In considering this case in light of the statutory factors, I have considered the findings of fact and conclusions of law above, the narrative summary explain the reasoning behind the penalty requested set forth in the Declaration of Matthew Rudolph attached to Complainant's Motion for Default, and the entire record in this case.

In his evaluation of the nature, circumstances, extent and gravity of the violations in this case, Mr. Rudolph considered that the violations consisted of releases of oil field brine was

seeping out of a brine pit at the facility directly into a tributary of Hulah Lake, a relatively permanent water body that flows for approximately 4500 feet before it reaches Hulah Lake. The brine levels taken at the point where the discharge entered waters of the United States was approximately 25,000 ppm total soluble salts. According to Mr. Rudolph, Respondent's discharges of brine into surface waters may cause environmental harm because high salt concentrations can kill vegetation and aquatic life. Mr. Rudolph cited EPA studies that found that fresh water fish were affected by chronic exposure to concentrations of sodium chloride at levels of 230 ppm and by acute exposure at levels of 860 ppm, far lower than levels present in this case. Mr. Rudolph also found that Respondent's violations undermine the purposes of the Clean Water Act, which include restoring and maintaining the chemical, physical, and biological integrity of waters of the United States.

Mr. Rudolph stated that Respondent has not raised ability to pay as an issue. In considering Respondent's prior history of violation, Mr. Rudolph found that in 2007 EPA issued an Order for Compliance to Respondent for violations of the CWA similar to the violations in this case and that Respondent did not comply with the Order. Mr. Rudolph also stated that EPA filed an administrative complaint against the Respondent in an earlier case, which is still pending. Regarding Respondent's culpability, Mr. Rudolph stated that Respondent has put forth very little effort to come into compliance. Mr. Rudolph also considered that there was economic benefit to the Respondent as a result of its noncompliance. Mr. Rudolph indicated that he did not make adjustments to his penalty calculation based upon "other factors as justice may require."

After giving consideration to all of the statutory factors, Mr. Rudolph arrived at a penalty calculation of \$14,700.

Pursuant to 40 C.F.R. § 22.17(c), “[t]he 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 Act.” The Complainant proposes to assess a total civil penalty of \$14,700.00 for the violations alleged in the Complaint. After considering the statutory factors and the entire record in this case, I find the civil penalty proposed is not inconsistent with the record of this proceeding and the CWA.

DEFAULT ORDER

Respondent is hereby **ORDERED** as follows:

1. Respondent is assessed a civil penalty in the amount of \$14,700.00.
 - a. Payment of the full amount of the civil penalty assessed shall be made within thirty (30) days after this default order becomes final under 40 C.F.R. § 22.27(c) by submitting a certified check or cashier’s check payable to “Treasurer, United States of America,” and mailed to:

Regional Hearing Clerk (6C)
U.S. EPA Region 6
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

A transmittal letter identifying the subject case, including the EPA docket number and Respondent’s name and address, shall accompany the check.

- b. Respondent shall mail a copy of the check to:

Lorena S. Vaughn
Regional Hearing Clerk (6RC-D)
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

And to:

Chief, Water Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Ellen Chang-Vaughn
Assistant Regional Counsel (6RC-EW)
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

2. This Default Order constitutes an Initial Decision, as provided in 40 C.F.R. § 22.17(c).

This Initial Decision shall become a final order unless (1) an appeal to the Environmental Appeals Board is taken from it by any party to the proceeding within thirty (30) days from the date of service provided in the certificate of service accompanying this Order; (2) a party moves to set aside the Default Order; or (3) the Environmental Appeals Board elects, *sua sponte*, to review the Initial Decision within forty-five (45) days after its service upon the parties.

SO ORDERED, this 10th day of March 2011.



MICHAEL C. BARRA
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 foregoing Initial Decision and Default Order for Docket No. Class I - CWA 06-2010-1703 was provided to the following persons on the date and in the manner stated below:

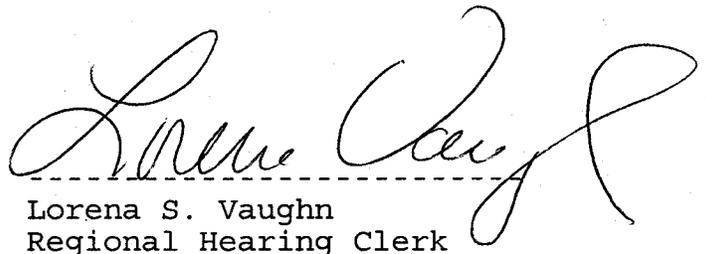
Mr. Patrick Adams
President
Altec Petroleum Group, Inc.
323 County Road 3460
Pawhuska, OK 74056

CERTIFIED MAIL

Ellen Chang-Vaughan
U.S. Environmental Protection Agency
Office of Regional Counsel
1445 Ross Avenue
Dallas, Texas 75202-2733

HAND DELIVERED

Eurika Durr
Environmental Appeals Board
U.S. Environmental Protection Agency
607 14th Street, NW
Suite 500
Washington, D.C. 20005



Lorena S. Vaughn
Regional Hearing Clerk

3/10/11
Date _____