



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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EPA REGION VIII  
HEARING CLERK

DOCKET NO.: CWA-08-2013-0003

IN THE MATTER OF:

PDC ENERGY, INC.

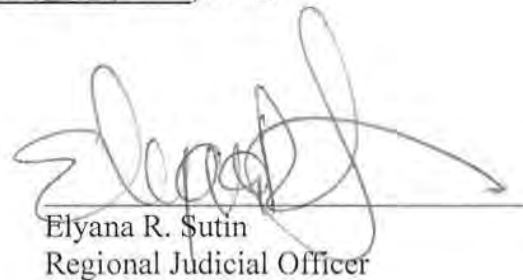
RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 22.18(b)(2), of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Settlement Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 20<sup>th</sup> DAY OF December, 2012.

  
Elyana R. Sutin  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2012 NOV -7 PM 12: 34

IN THE MATTER OF:

PDC Energy, Inc.

Respondent.

) Docket No. **CWA-08-2013-0003**

)  
) **COMBINED COMPLAINT AND**  
) **CONSENT AGREEMENT**

)  
) Proceeding to Assess Class II Civil Penalty  
) Under Sections 309 and 311  
) of the Clean Water Act

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TRAINING CLERK

The United States Environmental Protection Agency (EPA) and PDC Energy, Inc., formerly known as Petroleum Development Corporation (Respondent), by their undersigned representatives, hereby consent and agree as follows.

**AUTHORITY**

1. This Combined Complaint and Consent Agreement (Agreement) is issued under the authority vested in the Administrator of the EPA by sections 309(g)(2)(B) and 311(b)(6)(B)(ii) of the Clean Water Act (the Act), 33 U.S.C. §§ 1319(g)(2)(B) and 1321(b)(6)(B)(ii). The authority to enter into this Agreement has been delegated to the undersigned official.

2. With this Agreement, the parties intend to commence and conclude this matter simultaneously, as authorized by 40 C.F.R. §§ 22.13(b) and 28.18(b)(2) and (3).

**STATEMENTS OF THE PARTIES**

3. Solely for the purposes of this proceeding, the Respondent admits the jurisdictional allegations contained in this Agreement. The Respondent consents to the assessment of the civil penalty referenced below and waives any right to a hearing or appeal before any tribunal or to contest any statement of law or fact in this Agreement. The Respondent does not admit any legal matter or fact the EPA has alleged in paragraphs 6 through 108 of this Agreement, including but not limited to the EPA's allegations that the cited regulations relating to Spill Prevention, Control, and Countermeasure (SPCC) Plans were in effect or otherwise applied to PDC's operations at the relevant times.

4. The EPA takes the position that settlement of this matter is in the public interest.

5. The parties agree that the entry of this Agreement without litigation or adjudication of any issue of fact or law is the most appropriate means of resolving this matter at the least cost and expense to the Respondent and the EPA. The parties reserve any and all rights and defenses they may have against any person or entity not a party to this Agreement.

### **EPA'S ALLEGATIONS**

#### **Oil Discharge Prohibition**

6. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits discharging oil into or upon the navigable waters of the United States in such quantities as may be harmful as determined under section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4).

7. For purposes of section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), the EPA has determined, in 40 C.F.R. § 110.3, that a discharge of oil may be harmful to the public health or welfare or the environment of the United States if that discharge (a) violates applicable water quality standards or (b) causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

8. Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), directed the President to make the determination referenced in paragraph 7, above. The President delegated the authority to make this determination to the Administrator of the EPA by Executive Order No. 12777 (56 Fed. Reg. 54757, October 21, 1991) and Executive Order No. 11735 (38 Fed. Reg. 21243, August 7, 1973).

#### **Pollutant Discharge Prohibition**

9. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits any person from discharging any pollutant into navigable waters except as in compliance with sections 301, 312, 306, 307, 308, 402, and 404 of the Act, 33 U.S.C. §§ 1311, 1312, 1316, 1317, 1318, 1342, and 1344.

### **Spill Prevention Control and Countermeasure Requirements**

10. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), directed the President to issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from vessels and from onshore and offshore facilities, and to contain such discharges . . . .”

11. In response to the directive referenced in paragraph 10, above, the EPA promulgated 40 C.F.R. part 112.

12. A facility subject to 40 C.F.R. part 112 is required to prepare a written SPCC plan and to adhere to the discharge prevention and containment procedures specified in that regulation.

### **The Respondent**

13. The Respondent is a corporation organized under the laws of the State of Nevada and authorized to do business in the State of Colorado.

14. The Respondent is a “person” as defined in sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

15. The Respondent owns and/or operates numerous “production facilities” as defined in 40 C.F.R. § 112.2, including, but not limited to, wells, flowlines, tank batteries, separation units, and associated piping, in the Denver-Julesburg (DJ) Basin oil and gas production field (the Field) in Weld County, Colorado. The Field includes production facilities identified in paragraphs 23, 35, 48, 70, and 88, below, respectively, as the Bonertz 41-10, Hahn 13 & 14-27, Hahn 23 & 24-27, Heldt 12-18, and Peterson 43-13 Facilities (collectively, the Facilities).

16. For each Facility, the Respondent is an “owner or operator” as defined in section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6).

17. The Respondent is engaged in drilling, producing, gathering, storing, processing, transferring, and/or distributing oil at each Facility.

18. Each Facility is an “onshore facility” as defined in section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and a “non-transportation related” facility as defined in 40 C.F.R. § 112.2.

19. The oil referenced in paragraph 17, above, meets the definition of “oil” in 40 C.F.R. § 112.2 and section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

20. When discharged into water, the oil referenced in paragraphs 17 and 19, above, also meets the definition of “pollutant” in section 502(6) of the Act, 33 U.S.C. § 1362(6).

#### **All Facilities**

21. The Respondent prepared an SPCC Plan dated April 1, 2011, for the DJ Basin (the 2011 Field Plan). The Respondent has since prepared an updated SPCC Plan for the DJ Basin and submitted it to the EPA.

22. The 2011 Field Plan:

- a. was not certified by a Professional Engineer, in violation of 40 C.F.R. § 112.3(d);
- b. did not adequately address discharge prevention measures, in violation of 40 C.F.R. § 112.7(a)(3)(ii);
- c. did not predict the rate of flow and quantity of oil that could be discharged as a result of each type of reasonably anticipated equipment failure, in violation of 40 C.F.R. § 112.7(b).
- d. did not adequately discuss adequate containment and/or diversionary structures, in violation of 40 C.F.R. § 112.7(c);
- e. did not include an adequate oil spill contingency plan, in violation of 40 C.F.R. § 112.7(d)(1);
- f. did not adequately discuss engineered features to avoid discharging, in violation of 40 C.F.R. § 112.9(c)(4);
- g. did not adequately discuss transfer operations, in violation of 40 C.F.R. § 112.9(d)(1);

- h. did not address saltwater disposal facilities, in violation of 40 C.F.R. § 112.9(d)(2); and
- i. did not address positioning any mobile equipment, providing catchment basins or installing blowout prevention assemblies, in violation of 40 C.F.R. § 112.10.

**Bonertz 41-10 Facility**

23. The Bonertz 41-10 production facility (the Bonertz Facility) is located within the Field in the NE ¼ of the NE ¼ of Section 10, Township 5 North, Range 65 West, near the town of Greeley, in Weld County, Colorado.

24. The Bonertz Facility began operations on or before August 16, 2002.

25. The Bonertz Facility has a total oil storage capacity of approximately 407 barrels (equivalent to 17,094 U.S. gallons, one barrel equaling 42 U.S. gallons), based on storage in containers with a capacity of at least 55 U.S. gallons. It includes an oil storage tank with a capacity for 300 barrels, a produced water tank with a capacity of 100 barrels, and a separator tank with a capacity of seven barrels.

26. Due to its location, the Bonertz Facility could reasonably be expected to discharge oil and/or other pollutants to the Cache LaPoudre River and/or its tributaries and/or its adjoining shorelines in quantities that would (a) violate applicable water quality standards or (b) cause a film or sheen upon or discoloration of the surface of the navigable waters of the United States or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of such waters or their adjoining shorelines.

27. The Cache LaPoudre River is a navigable-in-fact water.

28. The Cache LaPoudre River is a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. §§ 110.1 and 112.2.

29. At all relevant times, the Bonertz Facility has been subject to the oil pollution prevention requirements of 40 C.F.R. part 112.



30. On June 28, 2011, EPA inspectors visited the Bonertz Facility and observed that it did not have secondary containment for a produced water loadout pipe, that vegetation was growing on and inside of an earthen berm surrounding parts of that facility, that the berm had eroded, and that an oil stain near the oil loadout area had not been cleaned up. Subsequent to the inspection, the EPA received information from the Respondent characterizing a pipe, which was observed at the time of the inspection, as an “oil dump line,” that transfers condensate from the separator to the condensate tank. The oil dump line was not located within the secondary containment berm.

31. The absence of secondary containment for the produced water loadout pipe and the “oil dump line” was in violation of 40 C.F.R. § 112.7(c).

32. The presence of vegetation and erosion on the earthen berm was an indication that the berm did not provide a means of containing the capacity of the Bonertz Facility’s largest tank with sufficient freeboard to contain precipitation, in violation of 40 C.F.R. § 112.9(c)(2).

33. The Respondent prepared a Site-Specific Appendix to the 2011 Field Plan for the Bonertz Facility (the Bonertz SPCC Appendix), dated October 1, 2010, and revised on November 10, 2011.

34. The Bonertz SPCC Appendix in place at the time of the June 28, 2011 inspection (dated October 1, 2010):

- a. did not include a diagram indicating the locations of the loadout pipe or underground piping, in violation of 40 C.F.R. § 112.7(a)(3); and
- b. had an inadequate discussion of general secondary containment (for example, not addressing aboveground piping outside the berm) in violation of 40 C.F.R. § 112.7(c).

#### **Hahn 13 & 14-27 Facility**

35. The Hahn 13 & 14-27 production facility (the Hahn 13 Facility) is located in the Field in the SE ¼ of the SW ¼ of Section 27, Township 5 North, Range 67 West, near Johnstown, in Weld County, Colorado.

36. The Hahn 13 Facility began operations on or before August 16, 2002.

37. The Hahn 13 Facility has a total oil storage capacity of approximately 507 barrels (equivalent to 21,294 gallons), based on storage in containers with a capacity of at least 55 U.S. gallons. It includes an oil storage tank with a capacity for 400 barrels and a produced water tank with a capacity of 100 barrels and a separator with a tank capacity of seven barrels.

38. Due to its location, the Hahn 13 Facility could reasonably be expected to discharge oil and/or other pollutants to the Hill and Brush Ditch, the Big Thompson River, and the South Platte River and/or tributaries to these waters and/or their adjoining shorelines in quantities that would (a) violate applicable water quality standards or (b) cause a film or sheen upon or discoloration of the surface of the navigable waters of the United States or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of such water or adjoining shorelines.

39. The Hill and Brush Ditch is at least a seasonal tributary of the Big Thompson River.

40. The Big Thompson River is a navigable-in-fact and perennial tributary of the South Platte River.

41. The South Platte River is a navigable-in-fact, perennial, and interstate river.

42. The Hill and Brush Ditch, the Big Thompson River, and the South Platte River are each a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. §§ 110.1 and 112.2.

43. At all relevant times, the Hahn 13 Facility has been subject to the oil pollution prevention requirements of 40 C.F.R. part 112.

44. On June 30, 2011, EPA inspectors observed (a) erosion and vegetation in the earthen berm surrounding the oil and water tanks at the Hahn 13 Facility, and (b) animal burrows in the earthen berm surrounding a separator tank at the Hahn 13 Facility.



45. The vegetation and/or animal burrows and/or erosion in the berms referenced in paragraph 44, above, compromised the ability of the berms to provide a means of containing the capacity of the Hahn 13 Facility's largest tank with sufficient freeboard to contain precipitation, in violation of 40 C.F.R. § 112.9(c)(2).

46. The Respondent prepared a Site-Specific Appendix to the 2011 Field Plan for the Hahn 13 Facility (the Hahn 13 SPCC Appendix), dated September 16, 2001, and revised on August 2, 2011.

47. The Hahn 13 SPCC Appendix in place at the time of the June 30, 2011 inspection (dated September 16, 2001):

- a. was not available at the time of the inspection, in violation of 40 C.F.R. § 112.3(e)(2);
- b. was not amended and recertified when technical changes were made, in violation of 40 C.F.R. § 112.5;
- c. was not signed by management, in violation of 40 C.F.R. § 112.7;
- d. did not include a facility description that matches the current configuration of the facility (e.g., by including internally inconsistent statements about the number of wells at the facility and incorrectly stating the capacity of a 100-barrel produced water tank at the facility), in violation of 40 C.F.R. § 112.7(a)(3)(i);
- e. did not include a facility description of the load-out areas matching the current configuration of the facility, in violation of 40 C.F.R. § 112.7(c);
- f. did not include a facility description for the sized secondary containment for the tanks matching the current configuration of the facility, in violation of 40 C.F.R. § 112.9(c)(2); and
- g. did not include a signed Substantial Harm Certification, in violation of 40 C.F.R. § 112.20(e).

### Hahn 23 & 24-27 Facility

48. The Hahn 23 & 24-27 production facility (the Hahn 23 Facility) is located within the Field in the SW ¼ of the SW ¼ of Section 27, Township 5 North, Range 67 West, in or near the town of Johnstown, in Weld County, Colorado.

49. In accordance with Colorado Oil and Gas Conservation Commission Rule 901e, and due to the proximity of surface and/or ground water, the Hahn 23 Facility may be deemed to be in a “sensitive area.”

50. The Hahn 23 Facility began operations on or before August 16, 2002.

51. The Hahn 23 Facility currently has a total oil storage capacity of 467 barrels (equivalent to 19,614 gallons), based on storage in containers with a capacity of at least 55 U.S. gallons. It includes a steel oil tank with a capacity of 400 barrels, a produced water tank with a capacity of 60 barrels (which replaced with a 75-barrel tank in 2011), a steel separator with a capacity of seven barrels, and an emergency vent pit of unknown capacity.

52. Due to its location, the Hahn 23 Facility could reasonably be expected to discharge oil and/or other pollutants to the Hill and Brush Ditch, the Big Thompson River, and the South Platte River, tributaries to these waters, or their adjoining shorelines in quantities that would (a) violate applicable water quality standards or (b) cause a film or sheen upon or discoloration of the surface of the navigable waters of the United States or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of such water or adjoining shorelines.

53. At all relevant times, the Hahn 23 Facility has been subject to the oil pollution prevention requirements of 40 C.F.R. part 112.

54. On June 30, 2011, EPA inspectors inspected the Hahn 23 Facility and observed an animal burrow in the berm, vegetation growing inside the berm, and oil staining on the ground east of the produced water tank.

55. The animal burrow and vegetation mentioned in paragraph 54, above, compromised the ability of the berm to be able to provide a means of containing the capacity of the largest tank in the Hahn 23 Facility with sufficient freeboard to contain precipitation, in violation of 40 C.F.R. § 112.9(c)(2).

56. The Respondent prepared a Site-Specific Appendix (to what was then the SPCC plan for the DJ Field) for the Hahn 23 Facility (the Hahn 23 SPCC Appendix), dated February 12, 2010, and revised on August 2, 2011.

57. The Hahn 23 SPCC Appendix dated February 12, 2010, which was in effect at the time of the June 30, 2011 inspection:

- a. did not include the type of oil or storage capacity of the emergency vent pit, in violation of 40 C.F.R. § 112.7(a)(3)(i); and
- b. did not include a discussion of secondary containment for, and construction of, the emergency vent pit, in violation of 40 C.F.R. § 112.9(c).

58. On or about June 5, 2007, and for an unknown number of days before that date, the Respondent discharged, via a seep created by a leak in a pipe, an estimated 20-40 barrels of oil (including oil mixed with other exploration and production (E & P) wastes containing benzene, ethylbenzene, xylene, and total recoverable petroleum hydrocarbons) from the Hahn 23 Facility into a nearby unnamed drainage, a wetland area, and adjoining shorelines, according to information the Respondent and/or its consultant submitted to the National Response Center (NRC), the Colorado Oil and Gas Conservation Commission (COGCC), and the EPA.

59. As a result of the discharge referenced in paragraph 58, above, according to a contractor hired by the Respondent, a visible sheen appeared in the unnamed drainage and the wetland mentioned in that paragraph.

60. The oil, benzene, ethylbenzene, xylene, and total recoverable petroleum hydrocarbons referenced in paragraph 58 above, constitute “pollutants” as defined in section 502(6) of the Act, 33 U.S.C. § 1362(6).

61. The pollutants referenced in paragraph 60, above, were discharged from a “point source” as defined in section 502(14) of the Act, 33 U.S.C. § 1362(14).

62. No Clean Water Act permit authorized the discharge described in paragraph 58, above.

63. The unnamed drainage and the wetland area referenced in paragraph 58, above, are part of a surface water drainage system that includes the Hill and Brush Ditch, the Big Thompson River, and the South Platte River.

64. As mentioned in paragraph 39, above, the Hill and Brush Ditch is at least a seasonal tributary of the Big Thompson River.

65. As mentioned in paragraph 40, above, the Big Thompson River is a navigable-in-fact and perennial tributary of the South Platte River.

66. As mentioned in paragraph 41, above, the South Platte River is a navigable-in-fact, perennial, and interstate river.

67. The unnamed drainage and wetlands referenced in paragraph 58, above, the stream that flows from these wetlands to the Hill and Brush Ditch, the Hill and Brush Ditch itself, the Big Thompson River, and the South Platte River are each a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. §§ 110.1 and 112.2.

68. The discharges described in paragraph 58, above, constituted discharges of oil in such quantities as may be harmful as determined under section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), and, therefore, were in violation of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(4).

69. The discharges described in paragraph 58, above, constituted discharges of pollutants without a permit and, therefore, were in violation of section 301(a) of the Act, 33 U.S.C. § 1311(a).

### Heldt 12-18 Facility

70. The Heldt 12-18 production facility (the Heldt Facility) is located within the Field in the SW ¼ of the NW ¼ of Section 18, Township 6 North, Range 64 West, near the town of Lucerne, in Weld County, Colorado.

71. The Heldt Facility began operations on or before August 16, 2002.

72. In accordance with Colorado Oil and Gas Conservation Commission Rule 901e, and due to the proximity of surface and/or ground water, the Heldt Facility may be deemed to be in a “sensitive area.”

73. Due to its location, the Heldt Facility could reasonably be expected to discharge oil and/or other pollutants to Lone Tree Creek, the South Platte River, and their tributaries or adjoining shorelines in quantities that would (a) violate applicable water quality standards or (b) cause a film or sheen upon or discoloration of the surface of the navigable waters of the United States or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of such water or adjoining shorelines.

74. The Heldt Facility currently has a total oil storage capacity of approximately 354 barrels (equivalent to 14,868 gallons), based on storage in containers with a capacity of at least 55 U.S. gallons. This includes an oil tank with a capacity of 300 barrels, a produced water tank with a capacity of 47 barrels (which replaced a 70-barrel tank in 2010), and a separator with a capacity of seven barrels.

75. The Respondent has prepared a Site-Specific Appendix to Field’s SPCC plan for the Heldt Facility (the Heldt SPCC Appendix), dated October 23, 2008, and revised on July 7, 2010.

76. The Heldt SPCC Appendix in place as of February 3, 2010, did not include a diagram indicating the locations of all piping, in violation of 40 C.F.R. § 112.7(a)(3).

77. On or about February 3, 2010, and for up to six days prior to that date, the Respondent discharged an unknown volume of oil (including oil mixed with other E & P wastes containing benzene,



ethylbenzene, toluene, and xylene) via an agricultural drain tile located beneath the surface of the Heldt Facility into an unnamed tributary of Lone Tree Creek, according to information the Respondent and/or its consultant submitted to the NRC, the COGCC, and the EPA.

78. No Clean Water Act permit authorized the discharges referenced in paragraph 77, above.

79. As a result of the discharge or spill described in paragraph 77, above, on at least two different dates in February of 2010, a visible sheen reportedly appeared on the unnamed tributary of Lone Tree Creek and adjoining shorelines. On at least February 4, 2010, the sheen reportedly appeared on Lone Tree Creek.

80. The Respondent conducted sampling on February 4, 5, 8, 11, 12, and 16, 2010, at the point of discharge described in paragraph 77, above, and at points 50 feet and 100 feet downstream of the discharge point. This sampling confirmed the presence of benzene, ethylbenzene, toluene, and xylenes at the discharge point on all days referenced in the preceding sentence, except that xylenes were not detected on February 8, 2010. Benzene, toluene, and xylenes were found in the unnamed tributary on at least February 4 and 5, 2010.

81. The oil, benzene, ethylbenzene, toluene, and xylenes referenced in paragraph 77, above, are “pollutants” as defined in section 502(6) of the Act, 33 U.S.C. § 1362(6).

82. The pollutants referenced in paragraph 77, above, were discharged from a “point source” as defined in section 502(14) of the Act, 33 U.S.C. § 1362(14).

83. Lone Tree Creek is an interstate water and at least a seasonal tributary to the South Platte River.

84. The unnamed tributary referenced in paragraph 77, above, flows at least seasonally.

85. Lone Tree Creek, the South Platte River, and unnamed tributary referenced in paragraph 77, above, are each a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. §§ 110.1 and 112.2.



86. The discharges described in paragraph 77, above, constituted discharges of oil in such quantities as may be harmful as determined under section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), and, therefore, were in violation of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(4).

87. The discharges described in paragraph 77, above, constituted discharges of pollutants without a permit and, therefore, were in violation of section 301(a) of the Act, 33 U.S.C. § 1311(a).

#### **Peterson 43-13 Facility**

88. The Peterson 43-13 production facility (the Peterson Facility) is located within the Field in the NE ¼ of the SE ¼ of Section 13, Township 6 North, Range 65 West, near Johnstown, in Weld County, Colorado.

89. The Peterson Facility began operations on or before August 16, 2002.

90. In accordance with Colorado Oil and Gas Conservation Commission Rule 901e, and due to the proximity of surface and/or ground water, the Peterson Facility may be deemed to be in a “sensitive area.”

91. The Peterson Facility has a total oil storage capacity of approximately 410 barrels, or 17,220 gallons, based on storage in containers with a capacity of at least 55 U.S. gallons. It includes a 300-barrel oil tank, a 100-barrel produced water tank, and a 10-barrel separator tank.

92. Due to its location, the Peterson Facility could reasonably be expected to discharge oil and/or other pollutants to Lone Tree Creek, the South Platte River, or tributaries to these waters or adjoining shorelines in quantities that would (a) violate applicable water quality standards or (b) cause a film or sheen upon or discoloration of the surface of the navigable waters of the United States or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of such water or adjoining shorelines.

93. At all relevant times, the Peterson Facility has been subject to the oil pollution prevention requirements of 40 C.F.R. part 112.

94. The Respondent prepared a Site-Specific Appendix to what was then the Field's SPCC plan for the Peterson Facility (the Peterson SPCC Appendix), dated October 23, 2008.

95. There was no Peterson SPCC Appendix in place at the time of the October 16, 2008 spill.

96. The Peterson SPCC Appendix dated October 23, 2008:

a. did not include a diagram indicating the locations of underground piping, in violation of 40 C.F.R. § 112.7(a)(3); and

b. identified inadequately sized secondary containment for the facility's separator in violation of 40 C.F.R. § 112.9(c)(2).

97. On or about October 16, 2008, and for an unknown number of days prior to that date, the Respondent discharged unknown quantities of oil (including oil mixed with other E & P wastes containing benzene, ethylbenzene, toluene, and xylene) via an agricultural drain tile located beneath the surface of the Peterson Facility into Lone Tree Creek, according to information the Respondent and/or its consultant submitted to the NRC, the COGCC, and the EPA.

98. The Respondent conducted sampling during the week following the discharge referenced in paragraph 97, above. The sampling confirmed that some combination of benzene, ethylbenzene, toluene, and xylenes discharged by the Respondent was still in Lone Tree Creek as of October 22 and 24, 2008, and that benzene was still in Lone Tree Creek as of November 4, 2008.

99. The pollutants referenced in paragraph 97, above, were discharged from a "point source" as defined in section 502(14) of the Act, 33 U.S.C. § 1362(14).

100. No Clean Water Act permit authorized the discharges referenced in paragraph 97, above.

101. As mentioned above, Lone Tree Creek and the South Platte River are each a "navigable water" as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. §§ 110.1 and 112.2.

102. The discharges described in paragraph 97, above, constituted discharges of pollutants without a permit and, therefore, were in violation of section 301(a) of the Act, 33 U.S.C. § 1311(a).

### **Enforcement**

103. Any person who discharges oil in violation of section 311(b) of the Act, 33 U.S.C. § 1321(b), may be assessed a Class II administrative penalty by the EPA, according to section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii). As adjusted for inflation pursuant to 40 C.F.R. part 19, the maximum penalty is \$11,000 per day for each day during which the violation continues for violations through January 12, 2009, and \$16,000 for each day during which the violation continues after that date.

104. Any person who fails or refuses to comply with any regulation issued under section 311(j) of the Act, 33 U.S.C. § 1321(j), may be assessed a Class II administrative penalty by the EPA, according to section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii). As adjusted for inflation pursuant to 40 C.F.R. part 19, the maximum penalty is \$11,000 per day for each day during which the violation continues for violations through January 12, 2009, and \$16,000 for each day the violation continues after that date.

105. Any person who discharges a pollutant to navigable waters without a permit in violation of section 301(a) of the Act, 33 U.S.C. § 1311(a), may be assessed a Class II administrative penalty by the EPA, according to section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B). As adjusted for inflation pursuant to 40 C.F.R. part 19, the maximum penalty is \$11,000 per day for each day during which the violation continues for violations after March 15, 2004, through January 12, 2009, and \$16,000 per day for each day during which the violation continues after January 12, 2009.

### **EPA's Findings of Violation**

106. Each of the Respondent's discharges of oil described in paragraphs 58 and 77, above, constitutes a violation of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), and section 301(a) of the Act, 33 U.S.C. § 1311(a), for each day during which the discharge occurred. For each such discharge, the Respondent is liable for civil administrative penalties pursuant to section 311(b)(6)(A)(i) of the Act,

33 U.S.C. § 1321(b)(6)(A)(i), or, alternatively, pursuant to section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

107. Each of the Respondent's discharges of oil (including oil mixed with other E & P wastes such as benzene, ethylbenzene, toluene, and xylene) described in paragraph 97, above, constitutes a violation of section 301(a) of the Act, 33 U.S.C. § 1311(a), for each day during which the discharge occurred. For each such discharge, the Respondent is liable for civil administrative penalties pursuant to section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

108. Each instance described in paragraphs 22, 31, 32, 34, 45, 47, 55, 57, 76, and 96, above, constitutes a violation of 40 C.F.R. part 112, for which the Respondent is liable for civil administrative penalties pursuant to section 311(b)(6)(A)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(A)(ii).

#### **TERMS AND CONDITIONS**

109. The Respondent consents and agrees to pay a civil administrative penalty in the amount of \$80,000 in two payments, as described below:

- a. One payment shall be in the amount of \$65,280 and is to reference the "Oil Spill Liability Trust Fund-311." The other payment shall be in the amount of \$14,720. Each payment is due no later than thirty calendar days from the date that the Regional Judicial Officer of EPA Region 8 issues a final order (the Final Order) incorporating this Consent Agreement. If the due date for any payment falls on a weekend or legal federal holiday, then the due date is the next business day. The date any payment is made is considered to be the date processed by U.S. Bank, described below. Payment must be received by 11:00 AM Eastern Standard Time to be considered as received that day.
- b. Each payment shall be made by remitting a cashier's or certified check, or making a wire transfer or on-line payment, including the name and docket number of this case. The payment referencing the Oil Spill Liability Trust Fund shall be payable to the "Oil Spill Liability Trust Fund-311." The other payment shall be payable to "Treasurer, United States of America." Each check will be sent as follows:

If sent by regular U.S. mail:

U.S. Environmental Protection Agency / Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

If sent by any overnight commercial carrier:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

If sent by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA: 021030004  
Account Number: 68010727

The payments may also be made on-line by accessing "www.pay.gov."

A copy of the check (or notification of wire transfer or on-line payment) payable to the Oil Spill Liability Trust Fund-311 shall be sent to the Regional Hearing Clerk (see the address below) and to:

Cynthia Peterson, Environmental Protection Specialist  
UIC/FIFRA/OPA Technical Enforcement Program (8ENF-UFO)  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

A copy of the check (or notification of wire transfer or on-line payment) payable to the U.S. Treasury shall be sent simultaneously to the Regional Hearing Clerk (see the address below) and to:

Natasha Davis, Environmental Protection Specialist  
Water Technical Enforcement Program (8ENF-W)  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

The name and address of the Regional Hearing Clerk are:

Tina Artemis, Regional Hearing Clerk (8RC)  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

- c. In the event any payment is not received by the specified due date, interest will accrue from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to



accrue until payment in full is received. (i.e., on the 1st late day, 30 days of interest accrues).

- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the Final Order, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6 %) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the date the final consent order is signed). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
- e. The Respondent agrees that no part of its penalty shall at any time be claimed as a federal or other tax deduction or tax credit.

112. Nothing in this Agreement shall relieve the Respondent of the duty to comply with the Act and its implementing regulations.

113. Any failure by the Respondent to comply with any term of this Agreement shall constitute a breach of this Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Agreement and for such other relief as may be appropriate.

114. Nothing in this Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of any failure by the Respondent to comply with this Agreement.

115. The undersigned representative of the Respondent certifies that he is fully authorized to enter into the terms and conditions of this Agreement and to bind the Respondent to the terms and conditions of this Agreement.

116. In accordance with 40 C.F.R. § 22.45, the EPA will provide public notice of this action. The EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations indicating that this Agreement is inappropriate, improper, or inadequate.



117. If comments received during the public comment period do not require modification of or withdrawal from this Agreement by the EPA, the parties agree to submit this Agreement to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.

118. Each party shall bear its own costs and attorney fees in connection with this matter.

119. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full settlement of the Respondent's liability for federal civil penalties relating to the violations alleged above.

120. This Agreement may be signed in multiple counterparts, each of which shall have the force and effect of an original.

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8**

Complainant

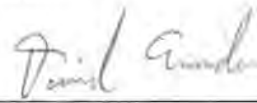


Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, CO 80202

Date: Nov. 7, 2012.

**PDC ENERGY, INC.**

Respondent

By: 

Daniel Amidon  
General Counsel and Secretary

Date: Nov 1, 2012.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8  
1595 Wynkoop Street, Denver, CO 80202-1129**

**PUBLIC NOTICE AND OPPORTUNITY TO COMMENT ON CLEAN WATER ACT SETTLEMENT**

**Action:** The Environmental Protection Agency (EPA) is providing public notice of a Combined Complaint and Consent Agreement under which PDC Energy, Inc. has agreed to pay an administrative penalty for Clean Water Act violations alleged by the EPA.

**Summary:** The EPA is authorized in Class II penalty proceedings under sections 309(g) and 311(b)(6) of the Clean Water Act (Act), 33 U.S.C. §§ 1319(g) and 1321(b)(6), to issue orders assessing civil penalties for violations of the Act and its implementing regulations, after providing (1) an opportunity for the person against whom the penalty is proposed to request a hearing and (2) an opportunity for the public to submit written comments and to participate in a hearing, if any.

On November 7, 2012, the EPA and PDC Energy, Inc. filed a Combined Complaint and Consent Agreement reflecting a proposed settlement in the following action:

In the matter of: PDC Energy, Inc.  
120 Genesis Boulevard  
Bridgeport, WV 26330

EPA Docket Number: CWA-08-2013-0003

Proposed penalty in the Complaint: \$80,000

Alleged violations: Violations of the EPA's Spill Prevention and Control Countermeasure regulations at 40 C.F.R. part 112; discharges of oil in violation of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3); and discharges of benzene, ethylbenzene, toluene, and xylene in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), for facilities in Weld County, Colorado.

Written comments on the complaint are encouraged and will be accepted at the address listed below for a period of **thirty (30) days after the publication of this notice**. Written comments submitted by the public as well as information submitted by respondent will be available for public review, subject to the provisions of law restricting the disclosure of confidential information. The Combined Complaint and Consent Agreement is available for review between 9:00 a.m. and 4:00 p.m. at the address listed below and on the internet at: <http://yosemite.epa.gov/oa/rhc/epaadmin.nsf>. If this matter is settled as proposed by the EPA and PDC Energy, Inc., there would be no hearing, unless a member of the public who has submitted timely comments on this proposed settlement requests a hearing and the EPA grants that request, pursuant to sections 309(g)(4)(C) and 311(b)(6)(C)(iii), 33 U.S.C. §§ 1319(g)(4)(C) and 1321(b)(6)(C)(iii).

Submit written comments to: Tina Artemis  
Regional Hearing Clerk (8RC)  
EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129  
Telephone: (303) 312-6765

**FOR FURTHER INFORMATION:** Persons wishing to receive a copy of the Combined Complaint and Consent Agreement, or other documents in this proceeding (such as the regulations in 40 C.F.R. part 22, which establish procedures for this matter), or to comment upon the proposed penalty assessment, or any other aspect of this matter, should contact the Regional Hearing Clerk

identified above. No action will be taken by EPA to finalize a settlement in this matter until 40 days after this public notice.

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBIMED COMPLAINT, CONSENT AGREEMENT** in the matter of **PDC ENERGY, INC.; DOCKET NO.: CWA-08-2013-0003** was filed with the Regional Hearing Clerk on November 7, 2012; the **FINAL ORDER** was filed on December 20, 2012.

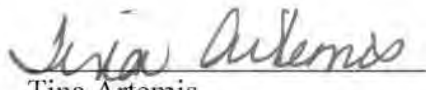
Further, the undersigned certifies that a true and correct copy of the documents were delivered to Margaret "Peggy" Livingston, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested and e-mailed on December 20, 2012.

Roger Freeman, Attorney  
Davis, Graham & Stubbs, LLP.  
1550 17<sup>th</sup> Street, Suite 500  
Denver, CO 80202  
[Roger.Freeman@dgsllaw.com](mailto:Roger.Freeman@dgsllaw.com)

E-mailed to:

Kim White  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

December 20, 2012

  
Tina Artemis  
Paralegal/Regional Hearing Clerk