



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region08

DEC 17 2014

Ref: 8ENF-W

CERTIFIED MAIL:
RETURN RECEIPT REQUESTED
#7009 3410 0000 2594 8817

Walt Baker, Acting Director
Division of Water Quality
Utah Department of Environmental Quality
P.O. Box 144870
Salt Lake City, UT 84114-4870

Re: Notice of Proposed Consent Agreement - Docket No. **CWA-08-2015-0008**

Dear Mr. Baker:

Enclosed is a copy of an executed Combined Complaint and Consent Agreement (CCCA) in the matter of Newfield Production Company (Respondent). The United States Environmental Protection Agency (EPA) is proposing to enter into the CCCA pursuant to section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and 40 C.F.R. section 22.13(b) to simultaneously commence and settle administratively a Class II civil penalty action against the Respondent.

In 2012, Respondent performed a voluntary internal environmental audit and self-evaluation (Audit) concerning the CWA compliance status of certain oil and gas facilities owned or operated by Respondent in Utah's Central Basin. The Audit found potential non-compliance with the CWA at 19 facilities at the Site, including well pads, access roads, and pipelines, due to discharges of dredged or fill material to wetlands and drainages without authorization by a CWA section 404 permit, in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), which prohibits the discharge of a pollutant unless authorized, among other things, by a permit issued under section 404 of the CWA, 33 U.S.C. § 1344. On June 1, 2012, Respondent provided a copy of the Audit to the U.S. Army Corps of Engineers. While the section 404 program is not a CWA authorized program in Utah, the EPA is providing notice to you pursuant to section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), because the violations occurred in Utah.



If you have any questions, the most knowledgeable person on my staff is Kenneth Champagne, Section 404 Enforcement Officer, who can be reached at 303-312-6608. If you have any comments on the proposed penalty, we would appreciate it if you would notify Mr. Champagne within two weeks of the date of this letter.

Thank you for your assistance.

Sincerely,



Arturo Palomares, Director
Water Technical Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice

Enclosure

cc: Tina Artemis, EPA, Regional Hearing Clerk



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2014 DEC 17 PM 12: 23

IN THE MATTER OF:

Newfield Production Company
1001 17th Street, Suite 2000
Denver, Colorado 80202

Respondent.

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FILED
**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

Docket No. **CWA_08-2015-0008**

Complainant, the United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Newfield Production Company (Newfield), by their undersigned representatives, hereby consent and agree as follows:

I. PRELIMINARY STATEMENT

1. This matter is subject to 40 C.F.R. Part 22. This Combined Complaint and Consent Agreement (Consent Agreement) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. The EPA has jurisdiction over this matter pursuant to section 309(g)(1)(A) and (2)(B) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1)(A) and (2)(B).
3. For the purposes of this settlement only, Newfield admits the jurisdictional allegations contained herein and neither admits nor denies the specific factual allegations.
4. In any proceeding to enforce this Consent Agreement, Newfield waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in this Consent Agreement. Newfield further waives its right to appeal the Final Order in this matter.
5. The EPA asserts that settlement of this matter is in the public interest, and the EPA and Newfield agree that entry of this Consent Agreement and its incorporation into a Final Order without further

litigation and without adjudication of any issue of fact or law will avoid prolonged and complicated litigation between the parties.

6. This Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Newfield, and Newfield's officers, directors, agents, successors and assigns. Any change in ownership of the Site, as defined below, or corporate organization structure or status of Newfield including, but not limited to, any transfer of assets or real or personal property shall not alter Newfield's responsibilities under this Consent Agreement unless the EPA, Newfield and the transferee agree in writing to allow the transferee to assume such responsibilities. Additionally, thirty (30) days prior to such transfer, Newfield shall notify the EPA at the address specified in paragraph 27.d of this Consent Agreement of the pending transfer.

7. This Consent Agreement contains all civil penalty settlement terms agreed to by the parties.

II. GENERAL ALLEGATIONS

8. Newfield is a corporation incorporated under the laws of the State of Texas and authorized to do business in the State of Utah.

9. At all relevant times, Newfield or its predecessor Harvest Holdings (US), Inc. (Harvest), owned, managed, operated on and/or otherwise controlled property in Township 3 South, Ranges 1, 2, and 3 West, Uintah Meridian, Duchesne and Uintah Counties, Utah (the Site).

10. In 2012, Newfield performed a voluntary internal environmental audit and self-evaluation (Audit) concerning the CWA compliance of certain oil and gas facilities owned or operated by Newfield at the Site. The Audit found potential non-compliance with the CWA at 19 facilities at the Site, including the construction of well pads, access roads, and pipelines, resulting in the discharge of dredged or fill material into wetlands and drainages without authorization by a CWA section 404 permit. Four of the 19 facilities were constructed and previously owned by Harvest.

11. On June 1, 2012, Newfield provided a copy of the Audit to the U.S. Army Corps of Engineers (Corps) and stated that it was doing so pursuant to the “*Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations,*” 65 Fed. Reg. 19,618 (April 11, 2000), and amendments (EPA Self-Audit Policy), and consistent with its understanding of the procedures under the “*Memorandum of Agreement Between the Department of the Army and the Environmental Protection Agency Concerning Federal Enforcement of the Section 404 Program of the Clean Water Act,*” dated January 19, 1989 (1989 MOA). Newfield further stated that it understood that the Corps would advise it if the Audit also needed to be forwarded to the EPA. Newfield did not provide a copy of the Audit to the EPA.

12. On September 10-12, 2012, the EPA and the Corps conducted a site visit of the 19 facilities identified in the Audit. The Corps also performed a preliminary jurisdictional determination and concluded that the impacted wetlands and drainages may be waters of the United States.

13. On January 24, 2013, the Corps sent a notice of violation to Newfield notifying it that it had discharged dredged or fill material into waters of the United States, including wetlands, at the Site in violation of the CWA.

14. On March 21, 2013, the Corps referred this case to the EPA for enforcement in accordance with the 1989 MOA.

15. The construction activities described in paragraph 10, above, resulted in discharges of dredged or fill material to drainages tributary to the Duchesne River and/or wetlands adjacent to the drainages and/or the Duchesne River. Neither Harvest nor Newfield applied for or received permits for these discharges and no permits have been issued under CWA section 404, 33 U.S.C. § 1344, to allow the unauthorized discharges to remain.

16. Newfield is a "person" within the meaning of section 502(5) of the Act, 33 U.S.C. § 1362(5).
17. The discharges described in paragraph 10, above, were from a "point source" within the meaning of CWA section 502(14), 33 U.S.C. § 1362(14).
18. The dredged and fill material referenced in paragraph 10, above, constitutes "pollutants" within the meaning of CWA section 502(6), 33 U.S.C. § 1362(6).
19. Newfield's and/or Harvest's activities as described in paragraph 10, above, constitute the "discharge of pollutants" within the meaning of the definition set forth in section 502(12) of the CWA, 33 U.S.C. 1362(12).
20. Without issuing a final jurisdictional determination, the Corps has determined that the 19 facilities at the Site contain drainages tributary to the Duchesne River and/or wetlands adjacent to the drainages and/or the Duchesne River.
21. The Duchesne River is a perennial tributary to the Green River, a navigable, interstate water of the United States.
22. For purposes of this Consent Agreement, Newfield does not dispute that the drainages tributary to the Duchesne River and/or wetlands adjacent to the drainages and/or the Duchesne River are "waters of the United States" within the meaning of 33 C.F.R. § 328.3(a) and therefore "navigable waters" within the meaning of CWA section 502(7), 33 U.S.C. § 1362(7).

III. DESCRIPTION OF VIOLATION

23. Newfield and/or Harvest did not apply for or receive CWA section 404 permits from the Corps authorizing the discharges of dredged or fill material described in paragraph 10, above, prior to their discharge, as required under sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344.

24. The discharges of pollutants from a point source by Newfield and/or Harvest into waters of the United States described in paragraph 10, above, were carried out without the required permits issued by the Corps pursuant to section 404 of the Act, 33 U.S.C. § 1344, and, therefore, constitute violations of section 301 of the Act, 33 U.S.C. § 1311.

IV. CIVIL PENALTY

25. Pursuant to section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and based in part on the nature of the violations and other relevant factors, including Newfield's self-disclosure to the Corps, the EPA has determined that an appropriate civil penalty to settle this action is the amount of \$175,000.00, to be paid within thirty (30) days of receipt of the Consent Agreement and signed Final Order issued by the Regional Judicial Officer.

26. Newfield consents and agrees to the assessment and payment of the civil penalty cited in the foregoing paragraph.

27. Newfield shall pay the agreed upon civil penalty by one of the following methods:

a. **Payment by cashier's or certified check:**

A cashier's or certified check, including the name and docket number of this case, for this amount, payable to "Treasurer, United States of America," to:

Regular Mail:

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

Overnight Mail:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza

Mail Station SL-MO-C2-GL
St. Louis, MO 63101

b. **Wire Transfer:**

Wire transfers should be directed to the Federal Reserve Bank of New York with the following information:

ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

c. **On Line Payment:**

This option is available through the Department of Treasury.

www.pay.gov

Enter sfo 1.1 in the search field.

Open form and complete the required fields.

d. Copies of the check or record of payment shall be sent to:

Kenneth Champagne
U.S. Environmental Protection Agency (8ENF-W)
1595 Wynkoop Street
Denver, CO 80202-1129

and

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

A transmittal letter identifying the case title and docket number must accompany the remittance and copies of the check.

In the event payment is not received by the specified due date, interest accrues 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 will have accrued). In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the due date of any payment, and for 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. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

28. The penalty specified in Paragraphs 25 and 26, above, represents civil penalties assessed by the EPA and shall never be claimed as a federal or other tax deduction or credit.

V. OTHER TERMS AND CONDITIONS

29. Failure by Newfield to comply with any of the terms of this Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of this Consent Agreement and for such other relief as may be appropriate.

30. Nothing in this Consent Agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Newfield's failure to perform pursuant to the terms of this Consent Agreement.

31. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this Consent Agreement and to execute and legally bind that party to this Consent Agreement.

32. This Consent Agreement shall be subject to a public comment period of not less than forty (40) days, pursuant to section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45.

The EPA may modify or withdraw its consent to this Consent Agreement if comments received disclose facts or considerations which indicate that the Consent Agreement is inappropriate, improper, or inadequate.

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

34. This Consent Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the civil penalty owed for violations alleged in this Consent Agreement.


35. This Consent Agreement resolves Newfield's liability for federal civil penalties under section 309(d) and (g) of the Act, 33 U.S.C. § 1319(d) and (g), for the alleged violations and facts contained in this Consent Agreement. This Consent Agreement shall not in any case affect the EPA's right to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law whether or not alleged in this Consent Agreement. This Consent Agreement shall not affect Newfield's right to assert any defense in any action by the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

36. Each party shall bear its own costs and attorney's fees in connection with all issues associated with this Consent Agreement.

IN THE MATTER OF: Newfield Production Company, Docket No.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Complainant.

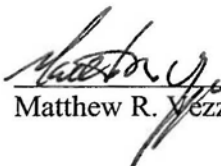
Date: 12/17/14



Suzanne J. Bohan
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

NEWFIELD PRODUCTION COMPANY
Respondent.

Date: 11/13/2014



Matthew R. Veza

U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 8
1595 Wynkoop Street, Denver, CO 80202-1129

PUBLIC NOTICE OF PROPOSED ADMINISTRATIVE PENALTY ASSESSMENT AND OPPORTUNITY TO COMMENT ON CLEAN WATER ACT CONSENT AGREEMENT

Purpose of Public Notice

The purpose of this notice is to announce the United States Environmental Protection Agency's (EPA's) intention to enter into a consent agreement with:

Newfield Production Company
1001 17th Street, Suite 2000
Denver, Colorado 80202

for alleged violations of the Clean Water Act (CWA) in wetlands and drainages of the Duchesne River, Duchesne and Uintah Counties, Utah, and to give the public the opportunity to comment on the proposed consent agreement.

Process Information

Under the CWA, the EPA is authorized to issue orders assessing civil penalties for violations of the CWA. 33 U.S.C. § 1319(g). The EPA may issue such an order after the commencement of an administrative penalty proceeding. As required by law, the EPA is hereby providing public notice of the proposed consent agreement. 33 U.S.C. § 1319(g)(4)(A) and 40 C.F.R. § 22.45(b).

Administrative enforcement proceedings are conducted under the EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. part 22. The procedures through which the public may submit written comment on a proposed consent agreement and participate in a proceeding are set forth in 40 C.F.R. § 22.45. The proposed consent agreement has been entered into by the parties for the purpose of simultaneously commencing and concluding this matter as authorized by 40 C.F.R. § 22.13(b) and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3). The deadline for submitting public comment on a proposed consent agreement is forty (40) days after the date of this public notice.

Case Summary

The consent agreement in the matter of Newfield Production Company (Respondent), Docket No. CWA-08-2015-0008, was filed on December 17, 2014. In 2012, Respondent performed a voluntary internal environmental audit and self-evaluation (Audit) concerning the CWA compliance status of certain oil and gas facilities owned or operated by Respondent in Utah's Central Basin. The Audit found potential non-compliance with the CWA at 19 facilities, including well pads, access roads, and pipelines, due to discharges of dredged or fill material to wetlands and drainages without authorization by a CWA section 404 permit, in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), which prohibits the discharge of a pollutant unless authorized, among other things, by a permit issued under section 404 of the CWA, 33 U.S.C. § 1344. On June 1, 2012, Respondent provided a copy of the Audit to the U.S. Army Corps of Engineers. A settlement was reached via pre-filing negotiations and formalized in this consent agreement with a proposed penalty of \$175,000 for unpermitted discharges of dredged or fill material into wetlands and drainages of the Duchesne River, Duchesne and Uintah Counties, Utah. The unpermitted discharges occurred sometime between 2011 and 2012. The Duchesne River is, and was at all relevant times, a water of the United States.

Further Information and Comments

Persons wishing to receive a copy of any documents filed in these proceedings, comment upon the proposed consent agreement, or otherwise participate in any of the proceedings should contact the Regional Hearing Clerk, Tina Artemis, U.S. Environmental Protection Agency, Region 8 (8RC), 1595 Wynkoop Street, Denver, Colorado 80202-1129, telephone: 303.312.6765. Written comments on this proposed consent agreement must be directed to the Regional Hearing Clerk by the deadline set forth above in this public notice. For technical questions, contact Kenneth Champagne, Technical Enforcement Program, at champagne.kenneth@epa.gov, the same EPA address above, or 303.312.6608. Persons with legal questions may contact Wendy Silver, Legal Enforcement Program, at silver.wendy@epa.gov, the same EPA address above, or 303.312.6637. The case docket for this proceeding is located in the EPA - Region 8 office identified above and the file will be open for public inspection during normal business hours. Written comments submitted by the public are available as part of the case docket, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, no final order assessing a penalty in these proceedings will be issued prior to **40 calendar days after publication of this notice.**

December 17, 2014

Date of Publication