

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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EPA REGION VIII  
HEARING CLERK

**IN THE MATTER OF:**

Phoenix Production Company  
225 West Yellowstone Avenue  
Cody, Wyoming 82414

Respondent.

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)  
) Docket No. **CWA-08-2016-0012**  
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**COMBINED COMPLAINT AND  
CONSENT AGREEMENT**

The U.S. Environmental Protection Agency, Region 8 (EPA), and Phoenix Production Company (Respondent), by their undersigned representatives, hereby consent and agree as follows:

**I. AUTHORITY**

1. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. This Combined Complaint and Consent Agreement (CCCA) 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 is executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. EPA has jurisdiction over this matter pursuant to section 309(g)(1)(A) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1)(A).
3. This CCCA is subject to the approval of the United States Bankruptcy Court for the Southern District of New York (Bankruptcy Court). Respondent shall promptly seek approval of this CCCA under Bankruptcy Rule 9019 or applicable provisions of the Bankruptcy Code, as described in paragraph 43 below.

**II. PARTIES BOUND**

4. This CCCA, upon incorporation into a final order and approval by the Bankruptcy Court, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, agents, successors and assigns. Each signatory to this CCCA certifies that they are authorized to execute and legally bind the party they represent to this CCCA.

**III. STATEMENT OF THE PARTIES**

5. Respondent admits the jurisdictional allegations contained herein and neither admits nor denies EPA's specific factual allegations.

6. In any proceeding to enforce this CCCA, Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in this CCCA. Respondent further waives its right to appeal any final order approving this CCCA.
7. EPA asserts that settlement of this matter is in the public interest, and EPA and Respondent agree that entry of this CCCA without further litigation and without adjudication of any issue of fact or law will avoid prolonged and complicated litigation between the parties.
8. This CCCA, upon incorporation into a final order, approval by the Bankruptcy Court, and full satisfaction by the parties, shall be a complete and full resolution of the Respondent's liability for federal civil penalties for the violations alleged below.

#### **IV. STATUTORY AND REGULATORY FRAMEWORK**

9. In order to restore and maintain the integrity of the Nation's waters, section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into waters of the United States unless authorized by certain other provisions of the CWA, including section 402 of the CWA, 33 U.S.C. § 1342.
10. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, under which EPA, and states with authorization from EPA, may permit discharges of pollutants into navigable waters, subject to specific terms and conditions.
11. The regulations implementing section 402 of the CWA, 33 U.S.C. § 1342, and the NPDES program are codified at 40 C.F.R. part 122.
12. Under 40 C.F.R. part 122.1, a NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

#### **V. EPA'S GENERAL ALLEGATIONS**

13. Respondent is a corporation organized under the laws of the State of Wyoming. Respondent's principal office is located in Los Angeles, California.
14. Respondent is a "person" within the meaning of section 502(5) of the CWA and is therefore, subject to the requirements of the CWA and its implementing regulations. 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
15. At all times relevant to this CCCA, Respondent was the owner and/or operator of the Rolff Lake Unit and Sheldon Dome Field oil and gas separation and wastewater treatment facilities (together, the Facilities), located in Fremont County, Wyoming.

16. The Facilities are on the Wind River Indian Reservation in Wyoming. EPA has direct implementation authority of the NPDES program in Indian country.
17. On September 30, 2005, EPA issued an Authorization to Discharge under the National Pollution Discharge Elimination System, Permit No. WY-0024945, to Respondent authorizing discharges from outfall 001 at the Rolff Lake Unit to an unnamed ephemeral tributary of Pasup Creek, which is a tributary to the Wind River (Rolff Lake Permit). The permit became effective on November 1, 2005. The permit expired on September 30, 2010, and was administratively extended until a renewed permit was issued on May 1, 2015.
18. On September 29, 2005, EPA issued an Authorization to Discharge under the National Pollution Discharge Elimination System, Permit No. WY-0024953, to Respondent authorizing discharges from outfall 001 at the Sheldon Dome Unit to an unnamed ephemeral tributary of Pasup Creek, which is a tributary to the Wind River (Sheldon Dome Permit). The permit became effective on November 1, 2005. The permit expired on September 30, 2010, and was administratively extended until a renewed permit was issued on May 1, 2015.
19. Pasup Creek and the Wind River are “navigable waters” within the meaning of the definition set forth in section 502(7) of the CWA, 33 U.S.C. § 1362(7).
20. The Facilities, as well as the outfalls referenced in paragraphs 17 and 18 above, constitute “point sources” within the meaning of section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
21. The produced water discharged from the outfalls referenced in paragraphs 17 and 18 above contains “pollutants” as defined in section 502(6) of the CWA, 33 U.S.C. § 1362(6).
22. The produced water discharged from the outfalls referenced in paragraphs 17 and 18 above constitute “discharges of a pollutant” as defined in section 502(12) of the CWA, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2.

#### Effluent Limitations

23. Part 1.3.1 of the Rolff Lake Permit limits the amount of Total Dissolved Solids (TDS) that may be discharged via outfall 001 to a daily maximum of 5000 mg/L.
24. Part 1.3.1 of the Rolff Lake Permit limits the amount of Specific Conductance (SC) that may be discharged via outfall 001 to a daily maximum of 7500 µmhos/cm.

### Operation and Maintenance Requirements

25. Part 3.5 of the Rolff Lake and Sheldon Dome Permits requires the permittee to properly operate and maintain all facilities and systems of treatment and control which are installed or used by the permittee to achieve compliance with the conditions of the permit.
26. Part 3.5.1 of the Rolff Lake and Sheldon Dome Permits requires the permittee to have an operation and maintenance (O&M) manual that describes the proper operational procedures and maintenance requirements of the facilities; have the O&M manual readily available to the operator and require that the operator become familiar with the manual; have a schedule for routine operation and maintenance activities at the facilities; and require the operator to perform the routine operation and maintenance requirements in accordance with the schedules.
27. Part 3.5.2 of the Rolff Lake and Sheldon Dome Permits requires the permittee to maintain a daily log containing a summary record of all O&M activities at the facilities, including the date and time; the name and title of the persons making the log entry; the name of the persons performing the activity; a brief description of the activity; and other information, as appropriate.

### **VI. EPA'S SPECIFIC ALLEGATIONS**

28. On September 24, 2014, inspectors from the EPA and the Wind River Environmental Quality Commission conducted site visits at the Facilities and observed, among other things, the following:
  - a. The Facilities' O&M manuals were not readily available and could not be produced during the inspection;
  - b. The daily O&M logs at the Facilities did not have all items required by the permit. The following items were not recorded in the O&M logs: time of maintenance, name and title of person making entry, and name of person performing activity;
  - c. Overgrown vegetation was present on the berms surrounding the earthen settling pond at the Sheldon Dome Field Facility, which could impact treatment effectiveness; and
  - d. The second settling pond at the Rolff Lake Unit Facility showed signs of inadequate maintenance, including a deposit of white scale near the inside of its berms, thick bottom deposits, a visible sheen on the surface of the pond, and a pipe leading into the pond that did not extend far enough to allow the flow out of the pipe to fall directly into the pond.
29. During an off-site review of Respondent's Discharge Monitoring Reports, EPA identified the following exceedances of the Facilities' permitted effluent limitations:
  - a. The Rolff Lake Unit Facility had exceedances of its effluent limitation for TDS in June 2013, July 2013, and December 2014; and
  - b. The Rolff Lake Unit Facility had exceedances of its effluent limitation for SC in October 2014.

## **VII. DESCRIPTION OF THE ALLEGED VIOLATIONS**

30. As described in paragraph 28 above, Respondent failed to comply with the operation and maintenance requirements at the Facilities, in violation of part 3.5 of the Sheldon Dome Field and Rolff Lake Unit Permits and section 301(a) of the CWA, 33 U.S.C. § 1311(a).
31. As described in paragraph 29 above, Respondent failed to comply with the effluent limitation requirements at the Rolff Lake Unit Facility, in violation of part 1.3.1 of the Rolff Lake Permit and section 301(a) of the CWA, 33 U.S.C. § 1311(a).

## **VIII. CIVIL PENALTY**

32. Pursuant to section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and after consideration of the facts of this case as they relate to the factors set forth in section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has determined that a civil penalty of sixty-five thousand dollars (\$65,000.00) is appropriate to settle this matter.
33. Respondent consents to and agrees that the United States on behalf of EPA shall have an allowed claim of \$65,000.00 (EPA Allowed Claim), to be paid as a general unsecured claim under the Respondent's Plan of Reorganization. The EPA Allowed Claim shall receive the same treatment under the Plan of Reorganization, without discrimination, as all other allowed general unsecured claims, with all attendant rights provided by the Bankruptcy Code and other applicable law, and shall not be entitled to any priority in distribution over other allowed general unsecured claims. In no event shall the EPA Allowed Claim be subordinated to any other allowed general unsecured claims pursuant to any provision of the Bankruptcy Code or other applicable law that authorizes or provides for subordination of allowed claims, including, without limitation, sections 105, 510, and 726(a)(4) of the Bankruptcy Code.
34. Cash distributions to the United States under this CCCA shall be made by remitting a check or making a wire transfer or on-line payment. The check or other payment shall designate the name and docket number of this case, be in the amount stated in the preceding paragraph, and be payable to "Treasurer, United States of America." The payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. Environmental Protection Agency  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank  
Government Lockbox No. 979077

1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101  
Contact: Craig Steffen, 513-487-2091, steffen.craig@epa.gov

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

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Beneficiary: US Environmental Protection Agency

If remitted through the Automated Clearing House (ACH) for receiving US currency:

U.S. Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 -- checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737  
Contacts: REX (Remittance Express): 866-234-5681

If remitted online with a debit card or credit card: No user name, password, or account number is necessary for this option. Online payment can be accessed via [WWW.PAY.GOV](http://WWW.PAY.GOV), entering SFO 1.1 in the form search box on the left side of the screen, opening the form, and following the directions on the screen.

35. Non-cash distributions to the United States shall be made to:

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive  
MS: Norwood  
Cincinnati, Ohio 45268

36. At the time of any cash or non-cash distribution pursuant to this CCCA, Respondent shall transmit written confirmation of such distribution to:

Michael Boeglin  
U.S. Environmental Protection Agency (8ENF-W-NP)  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

and

Melissa Haniewicz  
Regional Hearing Clerk  
U.S. Environmental Protection Agency (8RC)  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

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

37. The Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

#### **IX. PUBLIC NOTICE**

38. As required by section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45, EPA will provide public notice and a reasonable opportunity to comment on the penalty that Respondent has agreed to pay in this matter. EPA may modify or withdraw its consent to this CCCA if comments received disclose facts or considerations which indicate that this CCCA is inappropriate, improper, or inadequate.
39. If comments received during the public comment period do not require modification or withdrawal by EPA from this CCCA, and this CCCA has been approved by the Bankruptcy Court, the parties agree to submit this CCCA to the Regional Judicial Officer for Region 8 with a request that it be incorporated into a final order.

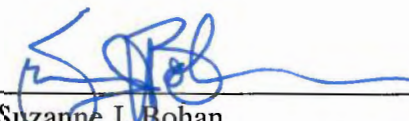
#### **X. GENERAL PROVISIONS**

40. Nothing in this CCCA shall relieve the Respondent of the duty to comply with the CWA and any regulation, order, or permit issued pursuant to the CWA.
41. Any failure by Respondent to comply with this CCCA shall constitute a breach of this CCCA and may result in referral of the matter to the United States Department of Justice for enforcement of this CCCA and such other relief as may be appropriate.

42. Nothing in this CCCA shall be construed as a waiver by 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 Respondent to comply with this CCCA.
43. Respondent shall file a motion for approval of this CCCA with the Bankruptcy Court within fourteen (14) days after signature by the Parties.
44. The parties agree to submit this CCCA to the Regional Judicial Officer, with a request that it be incorporated into a final order following provision of public notice pursuant to section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4) and 40 C.F.R. § 22.45, and following approval by the Bankruptcy Court.
45. Each party shall bear its own costs and attorney's fees in connection with this matter.


UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,  
Complainant

Date: 8/4/16

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

PHOENIX PRODUCTION COMPANY,  
Respondent

Date: 07/26/2016

By:   
Tom Thurmond  
Senior Vice President, Operations