

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

FILED

DEC -4 2 08

REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of

John William Hannah
d/b/a CRM Energy Partners
Osage County, Oklahoma,

Respondent

Facility No. OKU000332

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Docket No. CWA-06-2007-1923

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the United States Environmental Protection Agency ("EPA") pursuant to Section 309(g) of the Clean Water Act (herein "the Act"), 33 U.S.C. § 1319(g). This CAFO is issued in accordance with 40 C.F.R § 22.18, as described in the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits."

2. On September 24, 2007, EPA Region 6 issued to Respondent an Administrative Complaint ("Complaint") under Section 309(g) of the Act, 33 U.S.C. § 1319(g), which proposed to assess a civil penalty against Respondent and gave notice of Respondent's opportunity to request a hearing on the proposed administrative penalty assessment.

3. The Parties agree that settlement of the relevant matters without litigation will save time and resources, that it is in the public's interest, and that the entry of this CAFO is the most appropriate means of resolving such matters. Compliance with all the terms and conditions of this CAFO resolves only those violations specified in the Complaint.

4. Respondent admits the jurisdictional allegations of the Complaint; however, Respondent neither admits nor denies the specific factual allegations contained in the Complaint or in this CAFO.

5. Respondent expressly waives any right to contest the factual allegations or conclusions of law contained in the Complaint and this CAFO and waives its right to appeal the Final Order set forth herein.

6. Before the taking of any testimony, and without adjudication of any issue of law or fact, the parties agree to the terms of this CAFO and to its issuance. Respondent consents to the assessment and payment of a civil penalty in the amount and by the method stated below.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. John William Hannah (herein "Respondent") is an individual doing business as CRM Energy Partners in the State of Oklahoma, and as such, Respondent is a "person," as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

8. At all times relevant to this action, Respondent owned or operated the oil field facilities listed in the table below (herein "the facilities"), and was therefore an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

Description	Legal Location
Daniels Tank Battery	Northwest Quarter of Section 33, Township 23 North, Range 11 East, Osage County, Oklahoma
North Stuart Tank Battery	Southeast Quarter of Section 30, Township 23 North, Range 11 East, Osage County, Oklahoma
South Stuart Tank Battery	Northwest Quarter of Section 32, Township 23 North, Range 11 East, Osage County, Oklahoma
Hannah Energy Tank Battery	Southwest Quarter of Section 32, Township 23 North, Range 11 East, Osage County, Oklahoma
Flow Line	Northwest Quarter of Section 32, Township 23 North, Range 11 East, Osage County, Oklahoma
Flow Line	Northeast Quarter of Section 32, Township 23 North, Range 11 East, Osage County, Oklahoma
Flow Line	Northwest Quarter of Section 32, Township 23 North, Range 11 East, Osage County, Oklahoma

9. The Complaint specified findings of fact and conclusions of law that are hereby incorporated by reference and allege, among other things, that at the relevant times: Respondent was a "person" that "owned or operated" facilities that each acted as a "point source" subject to a "discharge" of "pollutants" to identified "waters of the United States" within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2; Respondent and the facilities were subject to the provisions of the Act, 33 U.S.C. § 1251 et seq., and the National Pollutant Discharge Elimination System ("NPDES") program; and Respondent violated Section 301 of the Act, 33 U.S.C. § 1311, by discharging pollutants, specifically oil field brine, to waters of the United States, as specified in the Complaint.

10. With the issuance of the Complaint, the Osage Nation Environmental and Natural Resources Department was notified and given an opportunity to consult with EPA regarding the proposed assessment of an administrative penalty against Respondent.

11. EPA notified the public of the Complaint and afforded the public reasonable opportunity to comment on the proposed penalty in accordance with Section 309(g)(4) of the Act, 33 U.S.C. § 309(g)(4). At the expiration of the notice period, EPA had received no comments from the public.

III. TERMS OF SETTLEMENT

A. PENALTY PROVISIONS

12. Based on the foregoing Findings of Fact and Conclusions of Law, EPA Region 6, considering the relevant criteria pursuant to Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), and acting pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), hereby orders that Respondent shall pay to the United States a civil penalty in the

amount of eight thousand two hundred dollars (\$8,200) to settle the violations specified in the Complaint.

13. Payment shall be made by one of the following methods within thirty (30) days of the effective date of this CAFO to one of the following addresses:

- a. By mailing a cashier's check or certified check, payable to "Treasurer of the United States," to:

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

- b. By wire transfer to:

Federal Reserve Bank of New York
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. By overnight mail (Express, FedEx, DHL, etc.) to:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Phone: 314-418-1028

- d. By credit card payments to <https://www.pay.gov/paygov/>.

"In the Matter of John William Hannah d/b/a CRM Energy Partners, Docket Number CWA-06-2007-1923" should be clearly marked on the check or remittance to ensure credit for payment.

14. Respondent shall send simultaneous notice of payment, including a copy of the check, to each of the following:

- (1) Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
- (2) Chief, NPDES Compliance Section (6EN-WC)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
- (3) Chief, Water Legal Branch (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent's adherence to these procedures will ensure proper credit when payment is received by EPA.

15. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

16. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

17. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30)-day period after the payment is due and an additional \$15.00 for each subsequent thirty (30)-day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

18. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), any person who fails to pay, on a timely basis, a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States' enforcement expenses including, but not limited to, attorneys' fees and costs incurred by the United States for collection proceedings, and a quarterly non-payment penalty for each quarter during which such failure to pay persists. Such non-payment penalty shall be 20 percent of the aggregate amount of such person's outstanding penalties and non-payment penalties accrued as of the beginning of each quarter. In such a collection action, the validity, amount, and appropriateness of the penalty assessed by this CAFO, and the terms of this CAFO, shall not be subject to review.

B. SUPPLEMENTAL ENVIRONMENTAL PROJECT

19. Respondent implemented a supplemental environmental project ("SEP"), which the parties agree was intended to secure significant environmental and public health protection. The SEP involved remediation and restoration of contaminated soils at the facilities. The SEP included the following activities which the Respondent began implementing on or about March 23, 2007 and completed August 20, 2008:

- (a) Daniels Tank Battery Facility - Performed restoration of contaminated soils by applying soil amendments such as lime, manure and seed to soils contaminated from brine discharges;
- (b) North Stuart Tank Battery - Performed restoration of contaminated soils by applying soil amendments such as lime, manure and seed to soils contaminated from brine discharges;
- (c) South Stuart Tank Battery - Performed restoration of contaminated soils by applying soil amendments such as lime, manure and seed to soils contaminated from brine discharges; and
- (d) Hannah Energy Tank Battery - Performed restoration of contaminated soils by applying soil amendments such as lime, manure and seed to soils contaminated from brine discharges. In addition, Respondent built a storm water diversionary structure to divert storm water around the facility and prevent additional erosion of topsoil.

Respondent will begin implementing the following SEP activities on or about October 15, 2008, which shall be completed by May 1, 2009:

- (e) North Stuart Lease - Remove contaminated soils and perform restoration of contaminated soils by applying soil amendments;
- (f) North Stuart Tank Battery - Perform restoration of contaminated soils by applying soil amendments such as lime, manure and seed to soils contaminated from brine discharges;
- (g) South Stuart Lease - Applying erosion controls to areas on the lease; and
- (h) South Stuart Pasture Area - Perform restoration of contaminated soils by applying soil amendments such as lime, manure and seed to soils contaminated from brine discharges.

20. Respondent has spent twenty-three thousand nine hundred and thirty dollars (\$23,930.00) relative to the qualified SEP activities performed before and on August 20, 2008. Respondent's total expenditure for the remaining SEP activities shall not be less than eleven thousand dollars

(\$11,000.00). No part of these expenditures included or shall include federal funds, including low interest federal loans, federal contracts, or federal grants.

21. Within thirty (30) days after Respondent has completed all SEP activities in accordance with Paragraph 19 above, Respondent shall submit a SEP Completion Report. The SEP Completion Report shall contain the following information:

- (a) A detailed description of the SEP as implemented;
- (b) a description of any operating problems encountered and the solutions thereto;
- (c) itemized costs of the SEP, supported by copies of purchase orders and receipts or cancelled checks, and copies of monthly reports regarding labor costs, equipment costs, and materials purchased;
- (d) certification that the SEP has been fully implemented pursuant to the provisions of this CAFO;
- (e) photographs of any SEP activities for which photographs can be provided to verify SEP implementation; and
- (f) a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

22. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph in order to evaluate Respondent's completion report.

23. In the SEP Completion Report, Respondent shall, by its representative who is fully authorized by Respondent to legally commit and bind Respondent, sign and certify under penalty of law that the information contained in such documents or reports is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

24. After receiving the SEP Completion Report, EPA shall notify Respondent whether or not Respondent has satisfactorily completed the SEP. If Respondent has not completed the SEP in

accordance with this CAFO, stipulated penalties may be assessed under Paragraphs 28 & 29 below.

25. Nothing herein shall obligate Respondent to publicize its involvement in the SEP; however, any public statement, oral or written, made by Respondent to publicize its participation in SEP activities shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the EPA for violations of CWA provisions."

26. Respondent, by execution of this CAFO, certifies that at no time relevant to this CAFO was Respondent required to perform or develop the SEP by any federal, state or local law or regulation; neither is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in any other case or in compliance with state or local requirements.

Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

27. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

28. If Respondent fails to satisfactorily complete the SEP by the deadline set forth in Paragraph 19, Respondent shall pay stipulated penalties for each day for which it fails to satisfactorily complete the SEP as follows:

<u>Penalty Per Day</u>	<u>Period of Noncompliance</u>
\$250	1 st through 14 th day
\$500	15 th through 30 th day
\$750	31 st day and beyond

29. If EPA determines that Respondent has abandoned work on the SEP, Respondent shall pay a stipulated penalty of \$13,000. Said penalty shall accrue as of the date specified for completing the SEP or on the date performance ceases, whichever is earlier. If EPA determines

that Respondent has abandoned work on the SEP, the daily stipulated penalties in Paragraph 28 would cease as of the date of EPA's determination.

30. Payment of stipulated penalties shall be made in the manner and by the method described in Section III.A. above, within thirty (30) days of receipt of a demand letter from EPA for payment of the accrued stipulated penalties.

31. If Respondent disputes the basis for imposition of stipulated penalties, the issue shall be resolved under the Dispute Resolution procedures of this CAFO. All stipulated penalties shall continue to accrue through the period that dispute resolution is ongoing. Invoking dispute resolution shall not stay the accrual of stipulated penalties; however, the obligation to pay the disputed accrued stipulated penalties shall be stayed pending resolution of the dispute.

C. DISPUTE RESOLUTION

32. If Respondent objects to any decision or directive of EPA in regard to Section III of this CAFO, Respondent shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Associate Director, Water Enforcement Branch (6EN-W)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Chief, Water Legal Branch (6RC-EW)
Office of Regional Counsel
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

33. The Water Enforcement Branch Associate Director ("AD ") or his designee and Respondent shall then have an additional fifteen (15) calendar days from EPA's receipt of Respondent's written objections to attempt to resolve the dispute. If an agreement is reached

between the AD and Respondent, the agreement shall be reduced to writing and signed by the AD and Respondent and incorporated by reference into this CAFO.

34. If no agreement is reached between the AD and Respondent within the time period set forth in Paragraph 33, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division ("Director") or his designee. The Director and Respondent shall then have a second fifteen (15)-day period to resolve the dispute. If an agreement is reached between the Director and Respondent, the resolution shall be reduced to writing and signed by the Director and Respondent and incorporated by reference into this CAFO. If the Director and Respondent are unable to reach agreement within this second fifteen (15)-day period, the Director shall provide a written statement of EPA's decision to Respondent, which shall be binding upon Respondent and incorporated by reference into this CAFO.

35. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section III.E. (Modification).

D. NOTIFICATION

36. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submittal or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication.

EPA: Matthew Rudolph, Enforcement Officer (6EN-WR)
Water Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

CRM Energy: Mr. John William Hannah
d/b/a CRM Energy Partners
16540 Ranchland Road
Skiatook, OK 74140

E. MODIFICATION

37. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both parties, and approval by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

F. TERMINATION

38. At such time as Respondent believes that it has complied with all terms and conditions of this CAFO, it may request that EPA advise whether the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary certification that there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request as expeditiously as possible. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and Respondent has been notified by EPA in writing that this CAFO has been satisfied and terminated.

G. GENERAL PROVISIONS

39. Issuance of this CAFO does not relieve Respondent from responsibility to comply with all requirements of the Act and the requirements of any permits issued thereunder, as described in Section 309(g)(7) of the Act, 33 U.S.C. § 1319(g)(7), nor does it constitute a waiver by EPA

of its right to enforce compliance with the requirements of Respondent's permits or other requirements of the Act by actions pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

40. In any action to enforce this CAFO, Respondent shall not assert as a defense any act or failure to act by any of its officers, directors, employees, agents, servants, contractors, subcontractors, successors or assigns.

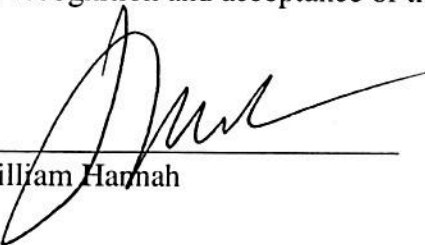
41. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of Respondent, its officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by Respondent in carrying out the activities required by this CAFO.

42. Respondent shall preserve, during the pendency of this CAFO, all records and documents in its possession or in the possession of its divisions, employees, agents, contractors, or successors which in any way relate to this CAFO regardless of any document retention policy to the contrary.


43. Each party agrees to bear its own costs and attorneys' fees in this matter, except to the extent that Respondent may be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the terms of this CAFO. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorneys' fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L.104-121), and any regulations promulgated pursuant to those Acts.

44. Each undersigned representative of the Parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement and to execute and legally bind that party to it.

In recognition and acceptance of the foregoing:



John William Harnah 11/20/08
Date

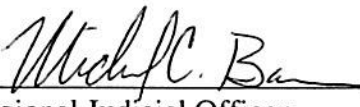


John Blevins 12/3/08
Date
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the CAFO. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers', agents', servants', employees', successors', or assigns') obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

Issuance Date: December 4, 2008



Regional Judicial Officer
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 4 day of December, 2008, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA, Region 6 (6RC-D), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy was placed in the United States mail, by certified mail, return receipt requested, addressed to the following:

Copy by certified mail,
return receipt requested:

Mr. John William Hannah
d/b/a CRM Energy Partners
16540 Ranchland Road
Skiatook, OK 74140

Copy:

Ms. Diane Daniels, Environmental Director
Osage Nation Environmental and
Natural Resources Department
P.O. Box 1495
Pawhuska, OK 74056

Jackie Samuel