

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

FILED  
2011 JUL 12 PM 1:45  
REGIONAL HEARING CLERK  
EPA REGION VI

In the Matter of: )  
)  
Altec Petroleum Groups. Inc. ) CWA-06-2008-1832  
)  
Respondent. )

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**COMPLAINANT'S RESPONSE TO THE MAY 24, 2011, COURT ORDER FOR MORE  
DEFINITE STATEMENT**

COMES NOW, the Complainant, the Director of the Compliance Assurance and Enforcement Division, through his attorney, Lorraine Dixon, in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the Consolidated Rules), 40 C.F.R. § 22.1 *et seq.*, and files its Response to this Court's May 24, 2011, Order For More Definite Statement.

**I. ADMINISTRATIVE PROCEDURES TO DATE**

1. On May 20, 2008, Complainant issued an Administrative Complaint to the Respondent, Altec Petroleum Group, Inc. ("Respondent") pursuant to Section 309(g) of the Clean Water Act ("CWA").
2. Complainant filed a request for a hearing with the Regional Hearing Clerk on June 26, 2008.<sup>1</sup>
3. On June 30, 2008, the Presiding Officer issued a Scheduling Order, ordering the following:
  - The parties to discuss settlement on or before July 23, 2008;
  - the parties to file a status report of settlement negotiations;<sup>2</sup>

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<sup>1</sup> Complainant alleges that the request did not comply with 40 C.F.R. § 22.15 as it did not clearly admit, deny or explain each of the factual allegations contained in the Original or the Amended Complaint.

- Respondent to file an answer to the Complaint as described in 40 C.F.R. § 22.15;<sup>3</sup>
- for both parties to submit a prehearing exchange no later than August 26, 2008;
- to file a response to the prehearing exchange by September 12, 2008; and
- the parties to participate in a prehearing conference with the Presiding Officer on September 23, 2008.

4. On July 31, 2008, the Presiding Officer issued its First Amended Scheduling Order granting both parties request for an extension to file their Prehearing exchanges and set a September 26, 2008 date for both parties to file its prehearing exchange.

5. On September 26, 2008, Complainant filed its PreHearing Exchange.

6. To date, Respondent has not filed its PreHearing exchange.

7. On October 28, 2008, Complainant filed a Motion to Amend the Complaint.

8. On June 9, 2009, the Presiding Officer granted Complainant's Motion to Amend the Complaint.

9. On July 13, 2009, Complainant filed a Motion for Extension of Time to file its Amended Complaint.

10. On July 15, 2009, Complainant filed its Amended Complaint.

11. Respondent did not file an Answer to the Amended Complaint.

12. On December 22, 2009 the Complainant filed a Motion for Accelerated Decision as to both Liability and Penalty seeking an Order granting full judgment against Respondent,

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<sup>2</sup> A Joint Status report was filed on July 23, 2008. In the Joint Status report both parties requested a thirty day extension to file their prehearing exchange.

<sup>3</sup> The Presiding Officer Ordered that the Respondent "... respond paragraph by paragraph to the Complaint, clearly and directly admitting, denying, or explaining each of the factual allegations in the Complaint with regard to which the Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation and so states, the allegation will be deemed to be denied. The answer shall also set out the circumstances or arguments which are alleged to constitute the grounds of any defense. Failure of respondent to admit, denies, or explain and material factual allegation continued in the Complaint will be deemed an admission of the allegation.

Altec Petroleum Group, Inc., in this matter and assessing a civil penalty in the amount of \$19,500. To date, Respondent has filed no response to this Motion.

13. On May 24, 2011, the Court filed an Order for More Definite Statement (“May 24, 2011 Order”). The May 24, 2011 Order requires Complainant’s witness, Matthew Rudolph, to file a declaration describing his actions in the Altec Petroleum Group, Inc, matter, including his observations at the well site and all other facts on which Complainant has based its conclusion on that demonstrates that Respondent discharged pollutants without authorization. The Order also establishes that if Complainant relies on photographic evidence, the declaration shall describe the content of each photograph and its relevance to those conclusions.

14. Complainant hereby responds by filing Mr. Matthew Rudolph’s Declaration and Complainant’s evidence in support thereof consistent with this Court’s May 24, 2011 Order.

## **II. DECLARATION OF MATTHEW RUDOLPH**

I, MATTHEW RUDOLPH, make the following statements truthfully and sound fully from personal knowledge. I, Matthew Rudolph, work as an Environmental Engineer employed in the Water Enforcement Branch of the Compliance Assurance Enforcement Division of the United States Environmental Protection Agency, Region 6 (“EPA”). I joined the EPA and the Water Enforcement Branch in May 2003. My job duties are that of an enforcement officer and inspector. As such, I have the authority and credentials to conduct inspections at facilities and issue enforcement actions against facilities which are in violation of the Clean Water Act (CWA).

On September 13, 2007, I spoke with John Rempe, a biologist with the Oklahoma Department of Wildlife Conservation. Mr. Rempe had concerns about a drilling location (facility) located on the Osage County Western Wall Wildlife Management Area (the “WMA”) and the water

pollution associated with this facility. Specifically, he had concerns about an earthen pit located at the facility which appeared to be contaminating a creek located adjacent to the facility and also located in the WMA. This facility was identified as Altec Petroleum Group, Inc.

On September 17, 2007, I was forwarded an e-mail from Renea Ryland describing operations at the Altec facility. Attached to the e-mail were two pictures: one of an unlined earthen pit with drilling fluids located on the facility; and the other was of an impacted creek. **(See Photo Exhibits 1 and 2)**<sup>4</sup>

On September 19, 2007, I was forwarded another e-mail from Renea Ryland. In the e-mail as an attachment was a letter from the OAG dated September 19, 2007. **(See Exhibit 1)** The letter indicates that the OAG took an action against the Defendant prohibiting the Defendant and its employees from entering the WMA and to cease and desist all present and future operations at the WMA.

On September 20, 2007, I was forwarded another e-mail from Renea Ryland. In the e-mail as an attachment was a copy of a letter from the OAG dated September 20, 2007. **(See Exhibit 2)** The letter outlines the expectations of the OAG regarding the cleanup work and the proper close out of the oil well located at the site.

On September 21, 2007, Kent Sanborn of the EPA conducted an inspection at the facility. Mr. Sanborn wrote an inspection report outlining his findings. **(See Exhibit 3)**<sup>5</sup>

On October 2, 2007, I received the inspection report via e-mail from Kent Sanborn. In the inspection report, Mr. Sanborn identified as areas of concerns two unlined earthen drilling pits

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<sup>4</sup> From my observations as an Environmental Engineer, photo exhibit 1 is of a flowing creek. I determined that this is the creek located directly adjacent to the facility. Additionally, photo exhibit 2 clearly shows fluids located in an unlined earthen pit at the facility and adjacent to the creek. Photo 2 also demonstrates that the pit is unlined and the soil in the pit is sandy. Based upon my knowledge as an Environmental Engineer sandy soil is highly permeable which would allow brine and other fluids to seep or flow through it.

<sup>5</sup> From the inspection report I determined that the facility had an unauthorized discharge of brine to a water body. In the inspection report the water body was identified as a tributary of Rock Creek but upon further investigation the water body was changed to a tributary of the South Fork of Pond Creek.

located at the northwest corner of the facility had been backfilled in. Mr. Sanborn observed evidence of where the backfilled pits had discharged brine into drainage located approximately 10 feet west and down-gradient of the pit. The discharge traveled approximately 470 feet to where the drainage empties into a creek which appeared to have relative permanent flow. The inspection report also identified an impacted creek which was determined to be a tributary of the South Fork of Pond Creek. Along with the inspection report there were photos which showed the facility and the impacted creek. **(See Photo Exhibits 3-12)**. Based upon my experience and knowledge as an Environmental Engineer it is my opinion, that the photos and evidence collected demonstrated that the impacted creek appeared to have a well defined bed and bank with water located in it. The creek appeared to be three to five feet wide and one foot deep, thus, I drew the conclusion that the impacted creek is a relative permanent flowing water body.

On October 3, 2007, I contacted Altec Petroleum Group, Inc. and spoke with the President of the company, Patrick Adams. I informed Mr. Adams that the EPA cited a violation to the CWA at his facility and an Administrative Order for Compliance would be issued by the EPA to Altec. I informed him that the AO was going to require Altec to perform the following: (1) cease all discharges of pollutants from the facility; (2) remove the brine from the creek; (3) install a catchment structure to catch all the contaminated run-off from the site; and (4) neutralize or extract the contaminated soils from the site. On November 16, 2007, Administrative Order Docket Number CWA-06-2008-1737 was issued to Altec Testing and Engineering, Inc. for a violation of the Clean Water Act referencing the September 21, 2007, inspection findings. The AO required Altec to perform the following: (1) cease all discharges of pollutants from the facility; (2) remove the brine from the creek; (3) install a catchment structure to catch all the

contaminated run-off from the site; and (4) neutralize or extract the contaminated soils from the site. **(See Exhibit 4)**

On November 15, 2007, I received a fax from Kent Sanborn of the sample results which were sent in to him from John Rempe. The samples were taken by Mr. Rempe in September 2007, and are both water and soil samples. The water samples showed high salt concentrations in the tributary of the South Fork of Pond Creek downstream of the facility and even higher salt concentrations at the discharge point of entry where the seep from the drilling pit was entering into the tributary of the South Fork of Pond Creek. The soil samples showed high salts in the soil at the drilling pit location after it was back filled in meaning the brine continued to seep from the old drilling pit through the soil and into the tributary of the South Fork of Pond Creek. **(See Exhibit 9)**

On March 10, 2008, EPA inspector Kent Sanborn conducted a second inspection at the site. **(See Exhibit 5)** During the second inspection EPA found evidence of yet another discharge from the site to the same tributary of the South Fork of Pond Creek. On March 12, 2008, I contacted Mr. Adams to let him know of the EPA's inspection findings from March 10, 2008, and that the probability of EPA pursuing a penalty for the alleged violations was likely.

On March 26, 2008, I received the March 10, 2008, inspection report via e-mail from Kent Sanborn. In the inspection report, Mr. Sanborn observed that no dam was ever built to contain the brine. He observed that on the drainage to the creek salinity measured 3,700 ppm to 6,700 ppm TSS and salinity downstream in the creek measured 1,200 ppm to 2,200 ppm TSS. **(See Photos Exhibits 13-16)**<sup>6</sup> Based upon my experience and knowledge as an Environmental Engineer I determined that the inspection reports and the photo evidence warranted a penalty for the alleged violations.

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<sup>6</sup> Photo exhibit 15 showed the impacted creek next to the facility to be flowing with a high salt content.

On May 20, 2008, the EPA issued an Administrative Complaint Docket No. CWA-06-2008-1832. **(See Exhibit 6).**

On June 23, 2008, the Defendant submitted a letter to the EPA addressing it to Mr. John Blevins, Director of the Compliance Assurance and Enforcement Division, requesting a hearing on this matter. **(See Exhibit 7)**

On July 2, 2008, I contacted Mr. Adams to discuss setting up a settlement meeting.

On July 17, 2008, Lorraine Dixon, Regional Attorney, and I had a conference call with Mr. Adams to discuss settlement. No settlement was reached.

On September 9, 2008, I contacted John Rempe to ask him if he would appear as an eye witness for this case. Mr. Rempe informed me that he could appear as a witness in this case.

On September 11, 2008, I contacted John Rempe in regards to information about the tributary of the South Fork of Pond Creek. Mr. Rempe informed me that the creek flows approximately 6 to 8 months out the year.

On September 18, 2008, Kent Sanborn re-inspected the facility and the tributary of the South Fork of Pond Creek.

Based upon my discussions with Mr. Sanborn, observations of the photographs and review of maps, I determined that the wrong water body had been identified in the Original Complaint.

On October 28, 2008, Complainant filed a Motion to Amend the Complaint.

On July 15, 2009, EPA filed its Amended Complaint to include the correct water body. **(See Exhibit 8)**

On November 6, 2008, I inspected Pond Creek downstream of where the discharge entered into the tributary of the South Fork of Pond Creek. I was unable to inspect the facility and the tributary of the South Fork of Pond Creek due to car trouble. Based upon my experience and

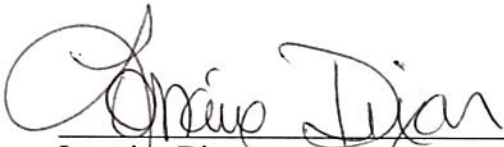
knowledge as an Environmental Engineer, in addition to, my inspection and the inspection of Mr. Kent Sanborn, the photos of Pond Creek and my review of maps I determined that the evidence supported the finding that Pond Creek is a navigable in-fact water body. (See Photos Exhibits 17-22)<sup>7</sup>

Thus, based upon all of the above mentioned evidence it is my opinion that Altec Petroleum Group is in violation of the Clean Water Act (CWA), 33 U.S.C. § 1251 *et seq.*, for discharges of pollutants to waters of the United States and that the penalty was calculated in accordance with the statutory factors of Section 309(g) (3) of the CWA. (See Exhibits 10 and 11)

### III. PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully prays the Court will issue the following order: Respondent, Altec Petroleum Group, Inc., is found to be in violation of Section 301 of the CWA for the unlawful discharge of pollutants to waters of the United States and a civil penalty in the amount of \$19,500 is assessed against the Respondent.

Respectfully submitted,



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<sup>7</sup> These photos show the South Fork of Pond Creek and Pond Creek further downstream from the discharge point of entry. Photo exhibit 21 shows Pond Creek and clearly here Pond Creek is navigable in-fact.



**CERTIFICATE OF SERVICE**

I hereby certify that on the 12 day of July 2011, the original of the foregoing Response to the May 24, 2011, Court Order for More Definite Statement was hand delivered to the Regional Hearing Clerk and the Regional Judicial Officer, U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that true and correct copies were placed in the United States Mail, postage prepaid, addressed to the following:

Mr. Patrick Adams  
President  
Altec Petroleum Group  
3232 County Road 3460  
Pawhuska, OK 74056

and

Mr. Patrick Adams  
President  
Altec Petroleum Group  
6035 Fremont St.  
Riverside, CA 92504-1114



Jackie Allen  
Paralegal