



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

SEP 27 2011

Ref: 8ENF-L

SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Raiford Patton
Asher Associates, LLC
2350 East Willamette Lane
Greenwood Village, CO 80121

Re: In the Matter of Asher Associates, LLC
Docket No. **CWA-08-2011-0037**
Administrative Complaint and Opportunity
to Request a Hearing

Dear Mr. Patton:

Enclosed please find an Administrative Complaint and Opportunity to Request a Hearing (Complaint) issued by the U.S. Environmental Protection Agency (EPA) pursuant to its authority under § 311(b)(6)(B) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6)(B). The Complaint is based on alleged violations of § 311(j) of the Act.

The Complaint cites Asher Associates, LLC (Asher), for failing to prepare and implement a Spill Prevention Control and Countermeasure (SPCC) plan for the Beaver Hole facility, the Bright Facility, the 22-21 facility and the 32-20 injection facility located in Niobrara County, Wyoming, in accordance with the oil pollution prevention regulations set forth at 40 C.F.R. §§ 112.7 and 112.9 as required by 40 C.F.R. § 112.3 for a duration of 18 to 24 months.

The Complaint proposes the assessment of administrative penalties against Asher in the amount of \$177,500. EPA proposed this penalty amount after considering the applicable statutory penalty factors in § 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8): the seriousness of the violations; the economic benefit to the violator resulting from the violations; the degree of culpability involved; any other penalty for the same incident; any history of prior violations; the economic impact of the penalty on the violator; and any other factors as justice may require.

Asher has the right to a hearing to contest the factual allegations in the Complaint. A copy of the procedures for such a hearing is enclosed for review. Please note the requirements for an answer set forth in 40 C.F.R. §§ 22.15 and 22.38. **If Asher wishes to contest the allegations or the penalties**

proposed in the Complaint, it must file a written answer within thirty (30) days of receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:

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

If Asher does not file an answer by the applicable deadline, it may be found in default. A default judgment may impose the full penalty proposed in the complaint.

Whether or not Asher requests a hearing, it may confer informally with EPA concerning the alleged violations or the proposed penalty amount. However, please note that a request for an informal conference does **not** extend the thirty (30) day period for filing an answer and/or requesting a hearing. Asher has the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but this is not required.

The Small Business Regulatory Enforcement and Fairness Act (SBREFA) may apply to this situation. Enclosed is a small business information sheet, relating to the Small Business Regulatory Enforcement and Fairness Act (SBREFA), outlining compliance assistance resources available to small businesses and small governments in case these are relevant. SBREFA does not eliminate the responsibility to comply with the Act.

If Asher has any questions, the most knowledgeable people on my staff regarding this matter are Brenda Morris and Cynthia Peterson. Ms. Morris is in our Legal Enforcement Program and can be reached at (303) 312-6891 if Asher wishes to request an informal settlement conference or if Asher's attorney has questions. Ms. Peterson is in our Oil Pollution Act Technical Enforcement Program and can be reached for technical questions at (303) 312-6879.

Sincerely,



Sandra A. Stavnes, Director
UIC/FIFRA/OPA Technical Enforcement Program

Enclosures: Complaint and Notice of Opportunity for Hearing
Consolidated Rules of Practice, 40 C.F.R. Part 22
SBREFA Information Sheet

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Docket No. **CWA-08-2011-0037**

2011 SEP 27 PM 2:27

FILED
EPA REGION VIII
DENVER, COLORADO

IN THE MATTER OF)

Asher Associates, LLC)
2350 E. Willamette Lane)
Greenwood Village, CO 80121)

Respondent.)

**ADMINISTRATIVE COMPLAINT AND
OPPORTUNITY TO REQUEST A HEARING**

Proceeding to Assess Class II Civil Penalty Under
Clean Water Act Section 311 for SPCC Violations

LEGAL AUTHORITY

1. This Administrative Complaint is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 311(b)(6)(B)(ii) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990. The Administrator has delegated this authority to the Regional Administrator of EPA, Region 8, who in turn has delegated it to the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice of EPA, Region 8 (Complainant).

2. Pursuant to Section 311(b)(6)(B)(ii) of the Act, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," codified at 40 C.F.R. Part 22 (Part 22), Complainant hereby provides notice of its proposal that the Administrator assess a civil penalty against Asher Associates, LLC (Respondent) for failing to comply with Spill Prevention Control and Countermeasure regulations set forth at 40 C.F.R. Part 112 under the authority of Section 311(j) and other

provisions of the Clean Water Act, 33 U.S.C. § 1321(j) and §§ 1251 *et seq.* (SPCC regulations), and notice of Respondent's opportunity to file an Answer to this Complaint and to request a hearing on the proposed penalty assessment.

ALLEGATIONS

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

4. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA his Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities.

5. EPA subsequently promulgated the SPCC regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, which established certain procedures, methods and requirements upon each owner and operator of a non-transportation-related onshore facility, if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as EPA has determined in 40 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States (“harmful quantity”).

6. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), EPA has determined that discharges of harmful quantities include oil discharges that cause either (1) a violation of applicable water quality standards; or (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

7. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.

8. Respondent is the owner and/or operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2 of the following onshore oil production facilities located in Niobrara County, Wyoming:

- a. **Federal 22-21 Facility-** Oil storage capacity of 98,910 gallons located at Latitude- 43.16963, Longitude-104.43256, within 1075 feet of an intermittent, unnamed stream, which flows into Buck Creek, a tributary to Lance Creek before entering the Cheyenne River, which flows to the Missouri River;
- b. **32-20 Injection Facility-** Oil storage capacity of 67,200 gallons located at Latitude- 43.17186, Longitude-104.44581, within 280 feet of an intermittent, unnamed stream, which flows into Peddy Draw, a tributary to Buck Creek, which flows into Lance Creek before entering the Cheyenne River, which flows to Missouri River;
- c. **Bright Facility (a/k/a JA-6 41-8 facility)-** Oil storage capacity of 85,050 gallons located at Latitude- 43.20201, Longitude-104.4412, within 300 feet of an intermittent, unnamed stream, which flows into Buck Creek, a tributary to Lance Creek before entering the Cheyenne River, which flows to the Missouri River; and
- d. **Beaver Hole Facility (a/k/a Federal 12-21 facility)-** Oil storage capacity of 33,600 gallons located at Latitude- 43.17128, Longitude-104.43585, within 950 feet of an intermittent, unnamed stream, which flows into Buck Creek, a tributary to Lance Creek before entering the Cheyenne River, which flows to the Missouri River.

9. The aggregate above-ground oil storage capacity at each of the facilities referenced in Paragraph 8, above, is greater than 1320 gallons of oil in containers each with a shell capacity of at least 55 gallons.

10. Buck Creek, Lance Creek, Cheyenne River, and the Missouri River are navigable waters of the United States within the meaning of 40 C.F.R. § 112.2 and Section 502(7) of the Act, 33 U.S.C. § 1362(7).

11. Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming “oil” as defined at Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1) or oil products located at the facilities.

12. The facilities are non-transportation-related facilities within the meaning of 40 C.F.R. § 112.2 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

13. The facilities are onshore facilities within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

14. The facilities are therefore non-transportation-related onshore facilities which, due to their location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity (an SPCC-regulated facility).

15. Pursuant to the Act, E.O. 12777, and 40 C.F.R. § 112.1, Respondent, as the owner and/or operator of an SPCC-regulated facility, is subject to the SPCC regulations.

16. Respondent and Respondent’s predecessor began operating the facility prior to August 16, 2002.

FAILURE TO PREPARE AND/OR IMPLEMENT REQUIRED SPCC PLAN

17. Paragraphs 3 through 16 above are hereby incorporated by reference.

18. 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated onshore oil production facility must prepare a written SPCC plan in accordance with Part 112, including but not limited to, Sections 112.7, 112.9 and 112.10.

19. On November 17, 2009, EPA inspectors, accompanied by Respondent's representative, David Weinert of Tetra Tech, inspected the Federal 22-21 Facility, Bright Facility, and Beaver Hole Facility.

20. During the inspection, EPA requested copies of SPCC plans for the Federal 22-21 Facility, Bright Facility, and Beaver Hole Facility, but none were available or provided.

21. Subsequent to the inspection, EPA made numerous requests for copies of any and/or all SPCC plans that existed prior to the February 2010 SPCC plan submittal.

22. Based upon the inability of the Respondent to provide any and/or all SPCC plans in existence prior to the February 2010 SPCC plan, EPA determined that, at the time of the inspection, the Respondent had failed to prepare and implement a written SPCC plan for the Federal 22-21 Facility, Bright Facility, and Beaver Hole Facility in accordance with 40 C.F.R. § 112.7 and other applicable sections of 40 C.F.R. Part 112.

23. A copy of the Notice of Inspection and a preliminary list of potential violations for each of the facilities was provided to Respondent's representative at the close of the inspection, and Respondent's representative was informed that Respondent should submit the SPCC plans for each of the facilities within thirty days.

24. On January 27, 2010, Jim Peterson, EPA, contacted Respondent and requested copies of the SPCC plans for the Federal 22-21 Facility, Bright Facility, and Beaver Hole Facility by February 8, 2010.

25. On or about February 8, 2010, EPA received a consolidated SPCC plan dated February 5, 2010, for the Federal 22-21 Facility, Bright Facility, and Beaver Hole Facility. The consolidated SPCC plan included an additional facility known as the 32-20 Injection Facility.

26. In correspondence dated September 2, 2010, Melissa Payan, EPA, informed Respondent that SPCC deficiencies were identified during the November 17, 2009 inspection.

27. In April 2010, EPA provided Respondent with a revised list of deficiencies (hereinafter referred to as Attachment A to this Complaint) based upon EPA's review of Respondent's February 2010 SPCC plan.

28. To date, Respondent has failed to adequately prepare and implement a written SPCC plan and for its facilities as documented by the deficiencies listed in Attachment A to this Complaint.

29. Respondent's failure to adequately prepare and implement a written SPCC plan for the Federal 22-21 Facility, Bright Facility, Beaver Hole Facility and 32-20 Injection Facility in accordance with 40 C.F.R. § 112.7 and any other applicable section of 40 C.F.R. Part 112 violated 40 C.F.R. § 112.3.

30. On information and belief, Respondent continues to violate these requirements for each day, commencing on the date of the inspection for the Federal 22-21 Facility, Bright Facility, and Beaver Hole Facility, and commencing on or about February 8, 2010 for the 32-20 Injection Facility, and continuing to the present day in violation of 40 C.F.R. § 112.3.

31. On information and belief, Respondent has violated these requirements for the Federal 22-21 Facility, Bright Facility, and Beaver Hole Facility each day during the period from November 19, 2009 to September 20, 2011, for a total of approximately 671 days, and violated these requirements for the 32-20 Injection Facility each day during the period from February 8, 2010 to September 20, 2011, for a total of approximately 589 days.

CIVIL PENALTY

32. As alleged in the preceding paragraphs, and pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

33. Based on the forgoing Allegations, and pursuant to the authority of Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. § 19.4, the Complainant proposes the assessment of administrative penalties against the Respondent in the amount of \$177,500.

34. Complainant proposes this penalty amount after considering the applicable statutory penalty factors in section 311(b)(8) of the Act, 33 U.S.C. §1321(b)(8): the seriousness of the violation, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

35. Each violation alleged in the preceding Paragraphs for the four facilities represents a very serious violation due to the risk posed to the environment as a result of the failure to prepare and implement an adequate SPCC plan. Given the storage capacity at each of the facilities, the

non-existence and/or inadequacy of secondary containment, the proximity to water, the initial failure of Respondent to have any SPCC plan for any of its facilities referenced above, the requisite cumulative number of SPCC deficiencies in the consolidated plan submitted in February 2010, and the duration of the noncompliance, the Respondent's ability to prevent or respond to worst-case spills through the development and implementation of a plan is significantly impaired.

36. The duration of the alleged violations (nearly two years at three facilities and approximately one year seven months at one facility); the Respondent's knowledge of these specific SPCC regulations as documented by a similar action taken against the Respondent in EPA's Region 7 office in 2002; the extensive list of deficiencies provided to Respondent at the close of EPA's inspection; and the conversations and meeting with EPA personnel since the EPA inspection demonstrate the Respondent's culpability and failure in promptly rectifying the violations. Additionally, Respondent has a history of violation within the past five years relative to violations of WYPDES permits (WY0030627, WY0032611, WY0034428, and WY0034436) that document failure to sample and submit discharge monitoring reports (DMRs) and a significant violation of oil and grease limits.

37. Lastly, the cost of compliance amounts to the preparation and implementation of an adequate consolidated SPCC plan, the construction of earthen berms or other secondary containment methods, and other actions necessary to address the deficiencies noted in Attachment A to this Complaint. Thus, the economic benefit to the Respondent of noncompliance is estimated at between \$4,000 and \$10,000 total for all facilities, depending on the choices Respondent makes relative to installation of adequate secondary containment.

38. Complainant is unaware of the economic impact to the Respondent other than general statements made by the Respondent and its counsel. EPA has requested financial verification and documentation of Respondent's general statements on numerous occasions through Respondent's counsel, but to date has not received such information. EPA would be willing to consider this information if provided.

OPPORTUNITY TO REQUEST A HEARING

39. As provided in the Act, Respondent has the right to a public hearing to contest this Complaint. If Respondent (1) contests the factual claims made in this Complaint; (2) contests the appropriateness of the proposed penalty; and/or (3) asserts that it is entitled to judgment as a matter of law, it must file a written Answer in accordance with Sections 22.15 and 22.38 of the Consolidated Rules within thirty (30) calendar days after receipt of this Complaint. The Answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which Respondent has knowledge; (2) state circumstances or arguments which are alleged to constitute grounds for defense; (3) state the facts Respondent disputes; (4) state the basis for opposing the proposed relief; and (5) specifically request an administrative hearing, if desired. Failure to admit, deny or explain any material factual allegation in this Complaint will constitute an admission of the allegation.

The Answer and one copy must be sent to:

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

and a copy must be sent to the following attorney:

Brenda L. Morris, Enforcement Attorney (8ENF-L)
U.S. EPA Region 8, Legal Enforcement Program
1595 Wynkoop Street
Denver, CO 80202-1129
Telephone: (303) 312-6891

IF RESPONDENT FAILS TO REQUEST A HEARING, IT WILL WAIVE ITS RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF RESPONDENT FAILS TO FILE A WRITTEN ANSWER OR PAY THE PROPOSED PENALTY WITHIN THE THIRTY (30) CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R. § 22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.

TERMS OF PAYMENT FOR QUICK RESOLUTION

40. If the Respondent does not contest the findings and penalty proposal set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within thirty (30) calendar days of receipt of this Complaint, no Answer need be filed. No later than thirty (30) days after the effective date of the Final Order, the Respondent shall pay the amount of \$177,500 by means of a cashier's or certified check, or by electronic funds transfer (EFT).

a. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of the case, referencing "Oil Spill Liability Trust Fund-311," for the amount, payable to the : "**Environmental Protection Agency,**" to:

**US checks by regular
US postal service mail:**

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

**Federal Express, Airborne,
Or other commercial carrier:**

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Wire transfers:

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 “

On Line Payment:

WWW.PAY.GOV
Enter sfo 1.1 in the search field
Open form and complete required fields.

- b. A copy of the check or wire transfer shall be simultaneously sent to:

Cynthia Peterson(8ENF-UFO)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

c. Payment of the penalty in this manner does not relieve Respondent of its obligation to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

PUBLIC NOTICE

41. Pursuant to section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C), the Complainant is providing public notice of and reasonable opportunity to comment on this proposed issuance of a complaint assessing administrative penalties against you. If a hearing is held on this matter, members of the public who submitted timely comments on this proceeding

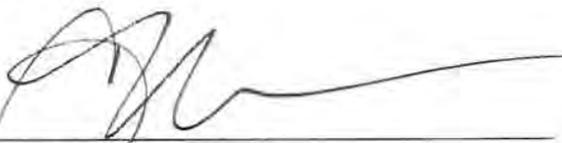
have the right under section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C), to be heard and present evidence at the hearing.

SETTLEMENT CONFERENCE

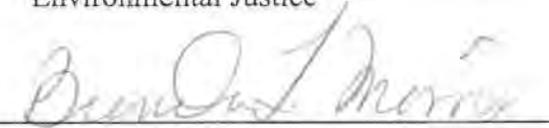
42. The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations and is willing to explore this possibility in an informal settlement conference. If you or your attorney, if you choose to be represented by one, have any questions or wish to have an informal settlement conference with EPA, please call Senior Enforcement Attorney Brenda Morris at (303) 312-6891. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in the Consolidated Rules. If a settlement can be reached, its terms must be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Regional Judicial Officer.

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

Date: 9-27-11

By: 
Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Date: 9-27-11

By: 
Brenda L. Morris, Attorney
Legal Enforcement Program

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the ADMINISTRATIVE COMPLAINT AND OPPORTUNITY TO REQUEST HEARING was hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent via certified mail to:

Asher Associates, LLC
Registered Agent: Harold W. Patton
2350 E. Willamette Lane
Greenwood Village, CO 80121

9/27/2011
Date

Judith M. McTernan
Signature

Asher Associates

SPCC Plan for Bright and Beaver Hole Fields: Consolidated Plan for Beaver Hole Facility, 22-21 Facility, Bright Facility, 32-20 Injection Facility, and 44-5 Facility
Inspections of Beaver Hole Facility, 22-21 Facility, and Bright Facility conducted on Nov. 17, 2009

Deficiencies List

9/20/11

Deficiency common to all facilities

- No SPCC plan at time of inspection in violation of 40 C.F.R. § 112.3.

Plan deficiencies common to all plans

- No records of training available in violation of 112.7(f).
- Cross reference is inaccurate in violation of 40 C.F.R § 112.7.
- Notification form is inadequate in violation of 40 C.F.R § 112.7(a)(4) The amount discharged to water and the media affected must be included.
- Discharge prediction is inadequate in violation of 40 C.F.R § 112.7(b). Discussion of discharge sources, quantities and rates are generic and aren't specific to each source.
- No discussion of general secondary containment for loading and unloading areas other than racks in violation of 40 C.F.R § 112.7(c).
- Specific bulk containers for which impracticability is being claimed are not identified in violation of 40 C.F.R § 112.7(d).
 - Discussion of integrity testing is inadequate in violation of 40 C.F.R § 112.7(d). Integrity tests should be specific for each container and/or pipe for which impracticability is being claimed. A generic list of potential integrity tests is not adequate.
 - Contingency plan is grossly inadequate in violation of 40 C.F.R § 112.7(d)(1).
- Discussion of brittle fracture is inadequate in violation of 40 C.F.R § 112.7(i). Field-erected tank, which is out of service, is not identified. No documentation of permanent closure is provided.
- Specific pipelines, for which secondary containment are not provided, are not identified in violation of 40 C.F.R § 112.9(d)(3).
 - Contingency plan is grossly inadequate in violation of 40 C.F.R § 112.9(d)(3)(i).
 - A flowline maintenance plan is not provided in violation of 40 C.F.R § 112.9(d)(4).

Documentation needed for all plans

- Inadequate secondary containment was scheduled to be corrected on Sept. 30, 2010. Documentation must be provided showing adequate containment and date completed.
- Records of any testing or inspections conducted over the last 12 months must be provided.
- Records of any training conducted over the last 12 months must be provided.

Site-Specific Deficiencies

Beaver Hole Facility

- Plan Deficiencies
 - Failure to identify the capacity of all oil containers in violation of 40 C.F.R. § 112.9(a)(3)(i).
- Technical Deficiencies
 - Inadequate secondary containment for bulk containers in violation of 40 C.F.R. § 112.9(c)(2). (As documented in plan and inspection.)
 - Inadequate secondary containment for heater treater in violation of 40 C.F.R. § 112.7(c)(2). (As documented in plan and inspection.)
 - Inadequate secondary containment for "out of service" tanks, for which no documentation of permanent closure under 40 C.F.R. § 112.2 is provided, in violation 40 C.F.R. § 112.9(c). (As documented in plan and inspection.)
 - Inadequate secondary containment for heat/treater used for storage, in violation 40 C.F.R. § 112.9(c). (As documented in plan and inspection.)
 - No records of test and inspections available in violation of 112.7(e). (As documented in inspection.)

22-21 Facility

- Plan Deficiencies
 - Inadequate facility diagram in violation of 40 C.F.R. § 112.7(a)(3). Not all piping shown on diagram.
 - Failure to identify the capacity of all oil containers in violation of 40 C.F.R. § 112.9(a)(3)(i).
- Technical Deficiencies
 - Secondary containment inadequate for single largest tank (500 bbl) in violation of 40 C.F.R. § 112.9(c). (As documented in plan and inspection.)
 - Inadequate secondary containment for HT /Knockout Tank in violation of 40 C.F.R. § 112.7(c)(2). (As documented in plan and inspection.)
 - No secondary containment for 400 bbl and 500 bbl Skim Tanks in violation of 40 C.F.R. § 112.9(c)(2).
 - No records of test and inspections available in violation of 112.7(e). (As documented in inspection.)
 - Tanks show evidence of rust and need for maintenance in violation of 40 C.F.R. § 112.9(c)(3). (As documented in inspection.)
 - Leaking valve in violation of 40 C.F.R. § 112.9(c)(3). (As documented in inspection.)

Bright Facility

- Plan Deficiencies
 - Failure to identify the capacity of all oil containers in violation of 40 C.F.R. § 112.9(a)(3)(i).
- Technical Deficiencies
 - No records of test and inspections available in violation of 112.7(e). (As documented in inspection.)
 - Inadequate secondary containment for "out of service" tanks, for which no documentation of permanent closure under 40 C.F.R. § 112.2 is provided, in violation 40 C.F.R. § 112.9(c). (As documented in plan and inspection.)
 - Inadequate containment capacity for 31-8/44-5 Tank Farm in violation of 40 C.F.R. § 112.9(c)(2). (As documented in plan.)

- Inadequate containment capacity for 41-8 produced water tank in violation of 40 C.F.R. § 112.9(c)(2). (As documented in plan.)
- No secondary containment for vessels in building in violation of 40 C.F.R. § 112.9(c)(2). (As documented in plan.)

32-20 Injection Facility

- Plan Deficiencies
 - Failure to identify the capacity of all oil containers in violation of 40 C.F.R. § 112.9(a)(3)(i).
- Technical Deficiencies
 - Inadequate secondary containment for produced water tank farm in violation of 40 C.F.R. § 112.9(c)(2). (As documented in plan.)
 - Inadequate general containment in violation of 40 C.F.R. § 112.7(c). Compressor and triplex pump are not addressed. (As documented in plan.)

**UNITED STATES 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 COMPLAINT**

Action: EPA is providing notice of a proposed administrative penalty assessment and the opportunity to comment on the proposed assessment (complaint) for alleged violations of the Clean Water Act.

Summary: EPA is authorized in Class II proceedings under Section 311(b)(6) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(b)(6), to issue orders assessing civil penalties for violations of the CWA and implementing regulations, after providing the person subject to the penalty with notice and opportunity for a hearing, and after providing the public with notice of the proposed penalty, opportunity to submit written comments and to participate in a Class II penalty proceeding, if any. The deadline for submitting public comment is thirty days after issuance of this notice.

On September XX, 2011, EPA commenced a civil administrative action by filing a complaint against the Respondent identified below, alleging a violation of the CWA and its regulations. Pursuant to Section 311(b)(6)(C) of the CWA, EPA hereby notifies the public of this proposed penalty assessment:

In the matter of: Asher Associates, LLC
2350 E. Willamette Lane
Greenwood Village, CO 80121

EPA Docket Number: CWA-08-2011-00XX

Proposed penalty in the Complaint: \$177,500.00

Alleged violations: Failure to prepare and implement Spill Prevention Control and Countermeasure Plans in accordance with 40 C.F.R. §§ 112.7 and 112.9 issued under Section 311(j) of the CWA for facilities in Niobrara County, Wyoming.

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 Consolidated Rules, the Complaint, or other documents in this proceeding, or to comment upon the proposed penalty assessment, or any other aspect of the matter, should contact the Regional Hearing Clerk identified above. The administrative record for the proceeding is located in the EPA Region 8 Hearing Clerk Office identified above and the file will be open for public inspection during normal business hours. No action will be taken by EPA to finalize a settlement in this matter until 30 days after this public notice.

§21.13

approve or disapprove the State issued statement, in accordance with the requirements of §21.5.

(2) The Regional Administrator will periodically review State program performance. In the event of State program deficiencies the Regional Administrator will notify the State of such deficiencies.

(3) During that period that any State's program is classified as deficient, statements issued by a State shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with §21.5, on any such statement.

(i) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in §21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

- Sec.
- 22.1 Scope of this part.
 - 22.2 Use of number and gender.
 - 22.3 Definitions.
 - 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
 - 22.5 Filing, service, and form of all filed documents; business confidentiality claims.
 - 22.6 Filing and service of rulings, orders and decisions.
 - 22.7 Computation and extension of time.
 - 22.8 *Ex parte* discussion of proceeding.
 - 22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing.

U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources, including workshops, training sessions, hotlines, websites and guides, to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

EPA's Small Business Websites

Small Business Environmental Homepage - www.smallbiz-enviroweb.org

Small Business Gateway - www.epa.gov/smallbusiness

EPA's Small Business Ombudsman - www.epa.gov/sbo or 1-800-368-5888

EPA's Compliance Assistance Homepage

[www.epa.gov/compliance/assistance/
business.html](http://www.epa.gov/compliance/assistance/business.html)

This page is a gateway to industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

EPA's Compliance Assistance Centers

www.assistancecenters.net

EPA's Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

Agriculture

www.epa.gov/agriculture/

Automotive Recycling

www.ecarcenter.org

Automotive Service and Repair

www.ecar-greenlink.org or 1-888-GRN-LINK

Chemical Manufacturing

www.chemalliance.org

Construction

www.cicacenter.org or 1-734-995-4911

Education

www.campuserc.org

Food Processing

www.fpeac.org

Healthcare

www.hercenter.org

Local Government

www.lgean.org

Metal Finishing

www.nmfrc.org

Paints and Coatings

www.paintcenter.org

Printed Wiring Board Manufacturing

www.pwbrc.org

Printing

www.pneac.org

Ports

www.portcompliance.org

U.S. Border Compliance and Import/Export Issues

www.bordercenter.org

Hotlines, Helplines and Clearinghouses

www.epa.gov/epahome/hotline.htm

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Some examples are:

Antimicrobial Information Hotline

info-antimicrobial@epa.gov or
1-703-308-6411

Clean Air Technology Center (CATC) Info-line

www.epa.gov/ttn/catc or 1-919-541-0800

Emergency Planning and Community Right-To-Know Act

[www.epa.gov/superfund/resources/
infocenter/epcra.htm](http://www.epa.gov/superfund/resources/infocenter/epcra.htm) or 1-800-424-9346

EPA Imported Vehicles and Engines Public Helpline

www.epa.gov/otaq/imports or
734-214-4100

National Pesticide Information Center

www.npic.orst.edu/ or 1-800-858-7378

National Response Center Hotline -

to report oil and hazardous substance spills
www.nrc.uscg.mil or 1-800-424-8802

Pollution Prevention Information Clearinghouse (PPIC)

www.epa.gov/opptintr/ppic or
1-202-566-0799

Safe Drinking Water Hotline

[www.epa.gov/safewater/hotline/index.
html](http://www.epa.gov/safewater/hotline/index.html) or 1-800-426-4791

Stratospheric Ozone Protection Hotline

www.epa.gov/ozone or 1-800-296-1996

Toxic Substances Control Act (TSCA) Hotline

tsc hotline@epa.gov or 1-202-554-1404

Wetlands Information Helpline

www.epa.gov/owow/wetlands/wetline.html or 1-800-832-7828

State and Tribal Web-Based Resources

State Resource Locators

www.envcap.org/statetools

The Locators provide state-specific contacts, regulations and resources covering the major environmental laws.

State Small Business Environmental Assistance Programs (SBEAPs)

www.smallbiz-enviroweb.org

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits. The website is a central point for sharing resources between EPA and states.

EPA's Tribal Compliance Assistance Center

www.epa.gov/tribalcompliance/index.html

The Center provides material to Tribes on environmental stewardship and regulations that might apply to tribal government operations.

EPA's Tribal Portal

www.epa.gov/tribalportal/

The Portal helps users locate tribal-related information within EPA and other federal agencies.

EPA Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two such policies that may apply to small businesses:

EPA's Small Business Compliance Policy

www.epa.gov/compliance/incentives/smallbusiness/index.html

This Policy offers small businesses special incentives to come into compliance voluntarily.

EPA's Audit Policy

www.epa.gov/compliance/incentives/auditing/auditpolicy.html

The Policy provides incentives to all businesses that voluntarily discover, promptly disclose and expeditiously correct their noncompliance.

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a SBREFA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247), or go to their website at www.sba.gov/ombudsman.

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

Your Duty to Comply

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.