

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
RECORDING CLERK

IN THE MATTER OF:) Docket No. CWA-08-2009-0034
)
Petroleum Development) ADMINISTRATIVE PENALTY
Corporation,) ANSWER
)
) Proceeding to Assess Class I Civil Penalty
) Under Sections 309 and 311
) of the Clean Water Act
Respondent.)

Petroleum Development Corporation ("PDC") hereby answers and asserts defenses as follows:

AUTHORITY

The Section titled "Authority" states conclusions of law to which no response is required. To the extent any additional response is required, PDC denies the remaining allegations in this Section.

ALLEGATIONS

1. PDC admits the allegations of Paragraph 1.
2. Paragraph 2 states conclusions of law to which no response is required.
3. PDC admits the allegations of Paragraph 3.
4. Paragraph 4 states conclusions of law to which no response is required.
5. Paragraph 5 states conclusions of law to which no response is required.
6. PDC admits the allegations of Paragraph 6.
7. PDC admits the allegations of Paragraph 7.
8. Paragraph 8 states conclusions of law to which no response is required.
9. Paragraph 9 states conclusions of law to which no response is required.

10. Paragraph 10 states conclusions of law to which no response is required.
11. Paragraph 11 states conclusions of law to which no response is required.
12. PDC admits that it is engaged in drilling, producing, gathering and storing natural gas and associated products at the facility. PDC denies the remaining allegations in Paragraph 12.
13. PDC admits the allegations of Paragraph 13.
14. Paragraph 14 states conclusions of law to which no response is required.
15. PDC admits the allegations of Paragraph 15.
16. Paragraph 16 states conclusions of law to which no response is required.
17. PDC admits the allegations of Paragraph 17.
18. PDC admits that the Colorado River is interstate. The remainder of Paragraph 18 states conclusions of law to which a response is not required.
19. Paragraph 19 states conclusions of law to which no response is required.
20. Paragraph 20 states conclusions of law to which no response is required.
21. Paragraph 21 states conclusions of law to which no response is required.
22. PDC denies the allegations of Paragraph 22. PDC estimates that approximately 175 barrels of condensate were released from the facility, while approximately 142 barrels were recovered – resulting in a net release of approximately 33 barrels.
23. PDC denies the allegations of Paragraph 23. PDC estimates that approximately 175 barrels of condensate were released from the facility, while approximately 142 barrels were recovered – resulting in a net release of 33 barrels. PDC estimates that less than 5 barrels of condensate reached Garden Gulch Creek.

24. PDC denies the allegations of Paragraph 24. PDC estimates that less than 5 barrels of condensate reached Garden Gulch Creek. PDC incorporates by reference its responses to Paragraphs 22-23.
25. PDC admits that a temporary visible sheen appeared on Garden Gulch Creek, lasting less than five hours. PDC denies the remaining allegations in Paragraph 25. PDC incorporates by reference its responses to Paragraphs 22-24.
26. Paragraph 26 states conclusions of law to which no response is required.
27. PDC denies the allegations in Paragraph 27. PDC specifically denies that it discharged Microblaze into Garden Gulch Creek. PDC incorporates by reference its responses to Paragraphs 22-25.
28. PDC admits that Microblaze was applied to the roadside ditch, to the storm water culvert, and to a ditch between the culvert and Garden Gulch Creek, but otherwise, in response to the first sentence of Paragraph 28, PDC incorporates by reference its responses to Paragraphs 22-25. PDC specifically denies the second sentence of Paragraph 28, for reasons stated herein.
29. PDC admits the allegations of Paragraph 29.
30. Paragraph 30 states conclusions of law to which no response is required.
31. PDC denies the allegations of Paragraph 31. PDC denies that an EPA On-Site Coordinator was available to authorize the use of Microblaze as a dispersant at the facility. PDC has been unable to locate any EPA On-Site Coordinator for the facility that could have authorized the application of Microblaze. PDC further incorporates all Affirmative Defenses as to Count 2 below as its basis for denial.
32. Paragraph 32 states conclusions of law to which no response is required.
33. Paragraph 33 states conclusions of law to which no response is required.

34. PDC admits that it released condensate from the facility to Garden Gulch Creek on or about May 21, 2009, as evidenced by a temporary visible sheen on Garden Gulch Creek, lasting less than five hours. The other allegations state conclusions of law to which no response is required. To the extent any additional response is required, PDC denies the remaining allegations in Paragraph 34.

35. Paragraph 35 states conclusions of law to which no response is required.

36. PDC denies the allegations of Paragraph 36.

37. Respondent denies that it discharged Microblaze into waters of the United States. The remainder of Paragraph 37 states conclusions of law to which no response is required.

GENERAL DENIAL

Except as expressly admitted herein, PDC denies each and every allegation of the Complaint.

AFFIRMATIVE DEFENSES AS TO COUNT 1

FIRST DEFENSE

For its first affirmative defense to EPA's Count 1, PDC states that the release of condensate was caused by an Act of God. The release of condensate was due to a small landslide, a natural, unavoidable cause. The landslide displaced the facility's above-ground storage tank ("AST") and caused the condensate line to detach from the tank bottom. Condensate overflowed the berm due to the landslide and was released into a roadside ditch.

SECOND DEFENSE

For its second affirmative defense to EPA's Count 1, PDC states that the extent, duration, and magnitude of the release were overstated in EPA's Complaint, resulting in an improper calculation of the proposed penalty.

THIRD DEFENSE

For its third affirmative defense to EPA's Count 1, PDC states that EPA improperly applied the maximum penalty of \$11,000 for the category of alleged violation identified by EPA in the Complaint, and failed to appropriately discount that penalty amount to account for statutory factors.

AFFIRMATIVE DEFENSES AS TO COUNT 2

FIRST DEFENSE

For its first defense to EPA's Count 2, PDC states that Microblaze was applied to prevent environmental harm caused by the release of condensate and cannot be the basis for a violation under these circumstances.

SECOND DEFENSE

For its second defense to EPA's Count 2, PDC states that Count 2 should be dismissed because the dispersant Microblaze was not discharged into the waters of the United States and thus no violation of Clean Water Act § 301(a), 33 U.S.C. § 1311(a), occurred.

THIRD DEFENSE

For its third defense to EPA's Count 2, PDC states that Microblaze is an EPA approved product for cleanup. Neither an EPA On-Scene Coordinator for this site nor a preauthorization plan for dispersants in EPA Region 8 were available to PDC at any time prior to or at the time of the release of Microblaze, nor would it have been feasible to obtain input or guidance from such sources. In lieu of any guidance from EPA Region 8, PDC applied Microblaze to protect public health and the environment, and should not be penalized for same.

FOURTH DEFENSE

For its fourth defense to EPA's Count 2, PDC states that no water was present or flowing in the soil areas of the storm water culvert and ditch to which Microblaze was applied,

and there was no potential for Microblaze to enter into Garden Gulch Creek. Rather, the prompt application of Microblaze to the above areas further minimized any impact in the spill area and should be considered as a further mitigating factor to limit the penalty imposed under Count 1, rather than serving as a basis for a separate alleged Count 2. As a matter of equity, EPA's attempt to impose a separate Count 2 and attendant penalty for PDC's proactive response measures is unfair and counterproductive.

FIFTH DEFENSE

For its fifth affirmative defense to EPA's Count 1, PDC states that EPA improperly applied the maximum penalty of \$11,000 for the category of alleged violation identified by EPA in the Complaint, and failed to appropriately discount that penalty amount to account for statutory factors.

PROPOSED PENALTY

The Section titled "Proposed Penalty" states conclusions of law to which no response is required. PDC denies the remaining allegations in this Section.

In response to this Section, PDC affirmatively states that the penalties proposed by the EPA for the alleged violations are inappropriate when taking into account the applicable statutory penalty factors for each of the alleged violations. *See* 40 C.F.R. § 22.15(a) (Respondents should answer the Complaint when it "contends that the proposed penalty . . . is inappropriate."). Pursuant to §§ 309(g)(2)(A) and 311(b)(6)(B)(i) of the Clean Water Act, 33 U.S.C. §§ 1319(g)(2)(A) and 1321(b)(6)(B)(i), and 40 C.F.R. part 19, a violator is liable for civil administrative penalties of up to \$11,000 for each violation occurring through January 12, 2009, the time period in which this alleged violation occurred. The EPA assessed the maximum

penalty allowed by law for both of the alleged violations (a total of \$22,000), despite the fact that nearly every penalty factor for both of the alleged violations weighed in favor of PDC.

With respect to the alleged release of oil under Clean Water Act § 311(b)(3), 33 U.S.C. § 1321(b)(3), the applicable statutory penalty factors are 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 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 factors as justice may require, based on Clean Water Act § 311(b)(8), 33 U.S.C. § 1321(b)(8).

The release of condensate from the PDC facility cannot be deemed anything close to “serious” given its nature, scope and duration, and that it was addressed immediately. In addition, PDC was not culpable for the release, as the release was caused by an unexpected landslide. Following the landslide and the subsequent release, PDC took aggressive steps to prevent the condensate from reaching Garden Gulch Creek. PDC placed absorbent pads in ditches, removed soil, and immediately informed EPA of the release. No economic benefit was realized by PDC as a result of the release. Instead, PDC spent over \$50,000 to clean up the spill quickly. As a result, PDC was able to minimize the amount of condensate that reached Garden Gulch Creek to less than five barrels and recovered all but approximately 33 barrels of condensate. As a result, the release caused only a temporary sheen of limited duration and location, and there was no detrimental impact to local waters or streambed areas along the localized area of Garden Gulch reached by the unrecovered condensate. PDC also had no history of prior violations. The EPA should have drastically reduced its proposed penalty for the release of condensate because of PDC’s swift and effective action.

With respect to the release of Microblaze under Clean Water Act § 301(a), 33 U.S.C. § 1311(a), the applicable statutory penalty factors the EPA must consider when proposing an administrative penalty are the nature, circumstances, extent and gravity of the violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require, based on Clean Water Act § 309(g)(3), 33 U.S.C. § 1319(g)(3).

The release of Microblaze was not serious and actually served to protect the environment. Microblaze was applied for the purpose of remediating the spill of condensate. The product was only applied to the soil along the ditch, culvert, and channel leading to Garden Gulch Creek, not to the Creek itself, all of which were dry and not flowing into the Creek during all relevant times during which Microblaze was applied. PDC realized no economic benefit from the use of Microblaze, instead paying to use this expensive product to ensure that the environment was protected. In fact, Microblaze has been declared an approved product for cleanup by the EPA and placed on the NCP Product Schedule under Bioremediation Agents. Due to all of these factors, apart from the fact that no violation occurred, there should be no penalty for the use of Microblaze to mitigate the impacts of the release of condensate.

PUBLIC HEARING

PDC requests a Public Hearing to resolve this matter.

Dated: January 11, 2010



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Petroleum Development Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of January, 2010, I served the foregoing Answer, via Hand Delivery, as follows:

Tina Artemis, Regional Hearing Clerk (8RC)
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A handwritten signature in cursive script, reading "Paige Howell", is written over a horizontal line.