

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Docket No. CWA 08-2011-0037

APR 27 AM 11:35

FILED
EPA REGION VIII
STATING CLERK

IN THE MATTER OF)

Petra Energy, Inc. and)
Asher Associates, LLC)
2350 E. Willamette Lane)
Greenwood Village, CO 80121)

Respondent.)

**FIRST AMENDED
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 First Amended Complaint is filed in accordance with 40 C.F.R. § 22.14(c) which allows amendment of the Complaint as a matter of right prior to the filing of the Answer. The initial Administrative Complaint (Initial Complaint) in this matter was filed on September 27, 2011, against Asher Associates, LLC., 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 Answer in this matter has not been filed. Based upon new information, this First Amended Complaint adds Petra Energy, Inc. as a Respondent, revises the total storage capacity amounts in paragraph 8, clarifies the tributaries in paragraph 10, includes evidence of the existence of an SPCC plan at the time of the inspection in paragraph 20, provides a current list of deficiencies in Attachment B referenced in paragraph 30, and reflects consideration of new information in paragraphs 38-40 that discuss penalty factors.

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 this First Amended Complaint and its proposal that the Administrator assess a civil penalty against Petra Energy, Inc. and Asher Associates, LLC (Respondents) 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 Respondents’ 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. Respondents are persons 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. Respondents are the owner(s) and/or operator(s) 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 capacity¹ of approximately 103,152 gallons located at Latitude: 43.16963, Longitude:-104.43256, within 1,075 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 approximately 6,720 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;

¹Oil storage capacity for each of the facilities is based on documents provided to EPA by Respondents subsequent to the issuance of the original Complaint.

- c. **Bright Facility** (a/k/a JA-6 41-8 facility)- Oil storage capacity of approximately 192,990 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 63,630 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 1,320 gallons of oil in containers each with a shell capacity of at least 55 gallons.

10. Buck Creek and Lance Creek are tributaries to the Cheyenne and the Missouri Rivers which 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. Respondents are 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, Respondents, as the owner(s) and/or operator(s) of an SPCC-regulated facility, are subject to the SPCC regulations.

16. Respondents and Respondents' predecessor began operating the facility prior to August 16, 2002.

**FAILURE TO ADEQUATELY PREPARE AND IMPLEMENT
REQUIRED WRITTEN 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 Respondents' 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 the existing SPCC plan could not be located or provided at that time.²

21. At the time of the inspection, the Respondents failed to adequately 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.

²In April 2012, Respondents located the SPCC plans initially requested during the inspection. Those SPCC plans were unsigned and not dated.

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

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

24. On or about February 8, 2010, EPA received from Respondents, 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.

25. Respondents failed to adequately prepare and implement a written SPCC plan for the Federal 22-21 Facility, the Bright Facility, the Beaver Hole Facility, and the 32-20 Injection Facility.

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

27. In April 2011, EPA provided Respondents with a revised list of deficiencies based upon EPA's review of Respondents' February 2010 SPCC plan. See Attachment A to both the Initial Complaint and this Amended Complaint.

28. From April 11, 2011, through and including the present, the parties have worked cooperatively to return the facilities into compliance with the CWA.

29. In the twenty-nine (29) months since the inspection, Respondents have completed several of the SPCC plan and implementation deficiencies listed on Attachment A.

30. Respondents have yet to complete the SPCC plan and implementation revisions listed in Attachment B to this Amended Complaint.

31. Respondents failed to adequately prepare and implement a written SPCC plan for its facilities at the time of the inspection through the present day.

32. Respondents' 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.

33. 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.

34. 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 April 24, 2012, for a total of approximately 29 months, and violated these requirements for the 32-20 Injection Facility each day during the period from February 8, 2010 to April 24, 2012, for a total of approximately 26 months.

CIVIL PENALTY

35. 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.

36. 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.

37. Based on the forgoing Allegations, and pursuant to the authority of Section 311(b)(6)(B)(ii) of the Act and 40 CFR § 19.4, the Complainant proposes that the Administrator, after considering the statutory penalty factors set forth at Section 311(b)(8) of the Act, issue a Final Order assessing administrative penalties against the Respondents in an amount not to exceed \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

38. 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.

39. Each violation alleged in the preceding Paragraphs for the four facilities represents a major 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 that existed at the time of inspection, the proximity to water, the initial failure of Respondents to be able to locate any SPCC plan for any of its facilities referenced above, the cumulative number of SPCC deficiencies in the consolidated plan submitted in February 2010, and the duration of the noncompliance, the Respondents' ability to prevent or respond to worst-case spills through the development and implementation of a plan is significantly impaired.

40. The duration of the alleged violations (29 months at three facilities and 26 months at one facility); the Respondents' knowledge of these specific SPCC regulations as documented by a similar action taken against the Respondents in EPA's Region 7 office in 2002; the extensive list of deficiencies provided to Respondents at the close of EPA's inspection; and the conversations and meetings with EPA personnel since the EPA inspection demonstrate the Respondents' culpability and failure in promptly rectifying the violations. Additionally, Respondents have a history of violation within the past five years relative to violations of Wyoming Pollution Discharge Elimination System (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. Additionally, as a result of the release of hydrogen sulfide, a deadly gas, the US Bureau of Land Management (BLM), has shut in at least one of Respondents' sour crude wells in Wyoming.

41. 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 remaining, outstanding deficiencies, estimated at between \$4,000 and \$10,000 total for all facilities. Thus, the economic benefit to the Respondent of noncompliance is estimated at between \$600 and \$1,000 total for all facilities, depending on the choices Respondents make relative to installation of adequate secondary containment.

OPPORTUNITY TO REQUEST A HEARING

42. As provided in the Act, Respondents have the right to a public hearing to contest this First Amended Complaint. If Respondents (1) contest the factual claims made in this First Amended Complaint; (2) contest the appropriateness of the proposed penalty; and/or (3) assert that it is entitled to judgment as a matter of law, it must file a written Answer in accordance with Sections 22.14(c), 22.15, and 22.38 of the Consolidated Rules within twenty (20) calendar days after receipt of this First Amended Complaint. The Answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the First Amended Complaint with regard to which Respondents have knowledge; (2) state circumstances or arguments which are alleged to constitute grounds for defense; (3) state the facts Respondents dispute; (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 First Amended 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 RESPONDENTS FAIL TO REQUEST A HEARING, IT WILL WAIVE ITS RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF RESPONDENTS FAIL 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

43. If the Respondents do 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 Respondents 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 (ENF-UFO)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

c. Payment of the penalty in this manner does not relieve Respondents of their obligation to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondents to the assessment of the proposed penalty and a waiver of Respondents' 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 the First Amended 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

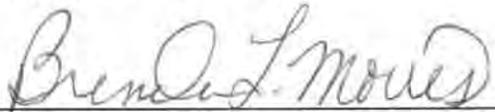
42. The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations and is willing to explore this possibility in an informal settlement conference. If you or your attorney, if you choose to be represented 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: 4/27/12

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

Date: 4-27-12

By: 
Brenda L. Morris, Attorney
Legal Enforcement Program

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.)

Asher Associates
Uncorrected Deficiencies List
Revised April 23, 2012, based on April 17, 2012 submittals

Deficiencies common to all facilities

- No documentation of training in violation of 40 C.F.R. § 112.7(f).

Plan deficiencies common to all plans

- Management approval not signed in violation of 40 C.F.R. § 112.7.
- Cross reference is inaccurate in violation of 40 C.F.R § 112.7. Page numbers are incorrect. Information regarding "Qualified Oil-Filled Equipment" is included in cross reference, which appears to be an error since there is no evidence of qualified oil-filled equipment at any of the facilities.
- Inadequate discussion of general secondary containment for loading and unloading areas other than racks in violation of 40 C.F.R § 112.7(c). Plan identifies spill response equipment as providing secondary containment for loading/unloading areas. However, there is no discussion of the adequacy of the spill response equipment in providing general secondary containment. The contents of spill kits, the availability of personnel and/or equipment to implement active secondary containment measures, etc., should be defined so as to document adequacy of secondary containment.
- Specific bulk containers for which impracticability is being claimed are not identified in violation of 40 C.F.R § 112.7(d). The *Site Specific Spill Planning, Countermeasures and Control Information* for the Bright – Tank Farm East – Satellite states, "Storage containers for which secondary containment is not practicable are discussed in Section 2.1." Impracticability for tanks at this site does not appear to be discussed in Section 2.1 or elsewhere in the plan. In addition, this sentence appears to contradict other statements in the plan regarding practicability of secondary containment. Clarification is needed regarding whether secondary containment is impracticable for storage containers for at this site.
- Although, the revised SPCC plan adequately addressed 40 C.F.R. § 112.9(d)(3) in Section 4.6, at the time it was written, the plan now needs to meet the requirements 40 C.F.R. § 112.9(d)(4) for flowline/intra-facility gathering line maintenance, which became effective November 10, 2011.

Documentation needed for all plans

- Plan amendments must be documented in Section 2.6.2 of the SPCC Plan. Technical Amendments must be certified by a professional engineer.
- According to the Site SPCC Deficiencies and Schedule of Compliance provided to EPA on April 17, 2012, secondary containment is inadequate at the 22-21 facility. Documentation must be provided showing adequate secondary containment and the date completed. Such proof typically includes, but is not limited to:
 - Secondary Containment
 - A signed statement and/or invoice from the contractor who constructed/repaired secondary containment at the facilities documenting the dimensions and height of the secondary containment as well as compaction methods used to ensure secondary containment is sufficiently impervious to contain a spill;
 - Photo documentation that shows the construction/repair of secondary containment, the dimensions and height of the secondary containment, and compaction ensuring secondary containment is sufficiently impervious to contain a spill;
 - Invoices documenting the purchase of spill response materials referenced in the plan to address general secondary containment requirements for loading and unloading areas.

- Documentation must be provided showing permanent closure of tanks and the date completed. Such proof typically includes, but is not limited to:
 - Permanent Closure of Tanks
 - Invoices from contractors that cleaned out the tanks (i.e. removed residual oil/sludge at bottom of the tank);
 - Invoices or other documentation for disposal of residual oil/sludge removed from tanks;
 - Photos showing all connecting lines and pipes have been disconnected and blanked off, and all valves (except ventilation valve) have been closed and locked; AND
 - Photos showing signs on tanks labeling them as permanently closed and noting the date of closure.
- The SPCC Plans dated February 5, 2010, and September 15, 2011, require semi –annual inspections. Records of any testing or inspections conducted over the last 12 months must be provided.
- The SPCC Plans dated February 5, 2010, and September 15, 2011, require annual training of personnel. Documentation of any training conducted over the last 12 months must be provided.
- Diagrams must be updated where secondary containment, other than height, has been changed. The SPCC Deficiencies and Schedule of Compliance provided to EPA on April 17, 2012, does not update the diagram for the Bright Facility berms, nor does it include a corrected Field Inspection Documentation and Secondary Containment Calculations form for the Bright 41-8 Battery.

Site-specific deficiencies

Beaver Hole Facility

- Technical Deficiencies
 - 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.) ***Neither secondary containment nor documentation of permanent closure is discussed for the 215 BBL Steel Horizontal Tank (OOS).***
 - No records of tests and inspections available in violation of 40 C.F.R. § 112.7(e). (As documented in inspection.)

22-21 Facility

- 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.) ***Dimensions provided document inadequate secondary containment.***
 - No 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.) ***Neither secondary containment nor documentation of permanent closure is provided for the 500 barrel produced water tank.***
 - No records of tests and inspections available in violation of 40 C.F.R. § 112.7(e). (As documented in inspection.)

Bright Facility

- Technical Deficiencies
 - No records of tests and inspections available in violation of 40 C.F.R. § 112.7(e). (As documented in inspection.)
 - The SPCC Deficiencies and Schedule of Compliance provided to EPA on April 17, 2012, does not update the diagram for the Bright Facility berms’ dimensions, nor does it include a corrected Field Inspection Documentation and Secondary Containment Calculations form for the Bright 41-8 Battery in violation of 40 C.F.R. § 112.7(a)(3).

32-20 Injection Facility

- Technical Deficiencies

- Inadequate general containment in violation of 40 C.F.R. § 112.7(c). Compressor and triplex pump are not addressed. (As documented in plan.)

Clarification needed

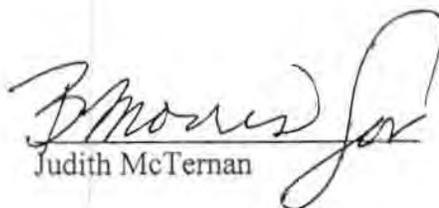
Although not a violation, the frequency of scheduled inspections should be clarified in the plan. Section 5.1.1 discusses semi-annual inspections, while the referenced "Facility Inspection Form" in Appendix E includes the word "Annual" in the title. Annual inspections are also referenced in Section 4.6. Please clarify the apparent discrepancies. Will you be conducting semi-annual and annual inspections, and will you be using the same inspection form for both?

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the FIRST AMENDED COMPLAINT AND NOTICE OF OPPORTUNITY FOR 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:

Law Office of Paul Zogg
1221 Pearl Street
Boulder, CO 80302

4-27-12
Date


Judith McTernan

1st page
only

**CIVIL PENALTY POLICY
FOR SECTION 311(b)(3) AND SECTION 311(j)
OF THE CLEAN WATER ACT**

**Office of Enforcement and Compliance Assurance
August 1998**

1st page only

§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.