

in this CCCA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701 – 706.

6. EPA asserts that settlement of this matter is in the public interest, and EPA and Respondent agree that entry of this CCCA and its incorporation into a Final Order without further litigation and without adjudication of any issue of fact or law will avoid prolonged and complicated litigation between the parties.
7. The parties reserve any and all rights and defenses they may have against any person or entity not a party to this CCCA.
8. This CCCA, upon incorporation into a Final Order and full satisfaction by the parties, shall be a complete and full resolution of Respondent's liability for federal civil penalties for the violations alleged below.

IV. STATUTORY AND REGULATORY FRAMEWORK

a. Oil Discharge Prohibition

9. The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. 33 U.S.C. § 1251(a).
10. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), in pertinent part, prohibits discharging oil into or upon the navigable waters of the United States in such quantities as may be harmful as determined under section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4).
11. For purposes of section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), EPA has determined, as set forth in 40 C.F.R. § 110.3, that a discharge of oil may be harmful to the public health or welfare or the environment of the United States if that discharge (a) violates applicable water quality standards or (b) causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or causes a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.
12. Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), directed the President to make the determination referenced in paragraph 11 above. The President delegated the authority to make this determination to the Administrator of the EPA by Executive Order No. 12777 (56 Fed. Reg. 54757, October 21, 1991) and Executive Order No. 11735 (38 Fed. Reg. 21243, August 7, 1973).

b. Spill Prevention, Control, and Countermeasure Requirements

13. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), directed the President to issue regulations "establishing procedures, methods, and equipment and other requirements for equipment

to prevent discharges of oil . . . from vessels and from onshore and offshore facilities, and to contain such discharges”

14. In response to the directive referenced in paragraph 13 above, EPA promulgated 40 C.F.R. part 112.
15. The owner or operator of a facility subject to 40 C.F.R. part 112 is required to prepare a written Spill Prevention, Control and Countermeasure (SPCC) plan and to adhere to the discharge prevention and containment procedures specified in that regulation.

V. EPA’S GENERAL ALLEGATIONS

Denbury Onshore, LLC

16. Respondent is and was at all relevant times a limited liability company organized under the laws of Delaware and authorized to do business in the State of Montana. Respondent’s principal office is located in Plano, Texas.
17. Respondent is and was at all relevant times a “person” within the meaning of sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

Cedar Creek Anticline Production Unit

18. Respondent owns and/or operates “production facilities” as defined in 40 C.F.R. § 112.2, associated with the Cedar Creek Anticline Production Unit located in Dawson, Fallon, Prairie, and Wibaux Counties, Montana and Bowman County, North Dakota.
19. At all times relevant to this CCCA, Respondent was an “owner or operator,” as defined in section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), of individual facilities located within the Cedar Creek Anticline Production Unit, including the South Pine Field, the Pennel Field and the Gas City Section 3 Tank Battery (together, the Cedar Creek Anticline Unit Facilities).
20. Respondent is and was at all times relevant to this CCCA engaged in drilling, producing, gathering, storing, processing, transferring, and/or distributing oil at the Cedar Creek Anticline Unit Facilities.
21. The Cedar Creek Anticline Unit Facilities were at all relevant times “onshore facilities” as defined in section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and “non-transportation related” facilities as defined in 40 C.F.R. § 112.2.
22. The Cedar Creek Anticline Unit Facilities had at all times relevant to this CCCA aggregate aboveground storage capacities that exceeded 1,320 U.S. gallons of oil.

23. At all relevant times, the Cedar Creek Anticline Unit Facilities have been subject to the SPCC requirements of 40 C.F.R. part 112.
24. The oil referenced in paragraph 20 above meets the definition of “oil” in section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2.
25. When discharged into water, the oil referenced in paragraphs 20 and 24 above, also meets the definition of “pollutant” in section 502(6) of the CWA, 33 U.S.C. § 1362(6).

Yellowstone River

26. Due to their locations, the Cedar Creek Anticline Unit Facilities could reasonably be expected to discharge oil and/or other pollutants to the Yellowstone River and/or its adjoining shorelines and/or tributaries of the Yellowstone River and/or wetlands adjacent to those tributaries in quantities that would a) violate applicable water quality standards or (b) cause a film or a sheen upon or discoloration of the surface of the navigable waters of the United States or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of such waters or their adjoining shorelines.
27. Cedar Creek is a tributary of the Yellowstone River.
28. Sandstone Creek is a tributary of the Yellowstone River.
29. The Yellowstone River is a navigable-in-fact water.
30. The Yellowstone River is a “navigable water” as defined in section 502(7) of the CWA, 33 U.S.C. § 1362(7).

VI. EPA’S SPECIFIC ALLEGATIONS

Discharges

March 20, 2011 Discharge

31. On or about March 20, 2011, Respondent discovered a discharge of 5 barrels of crude oil from a fiberglass pipeline located in the Pennel Field at NE/4, NE/4, Section 7 T7N, R60E, Lat/Long 46.38263°N, 104.24110°W, in Fallon County, Montana.
32. The discharge described in paragraph 31 above migrated ½ mile down gradient to a drainage that connected to Sandstone Creek, a tributary of the Yellowstone River.

33. The discharge referenced in paragraph 31 above violated water quality standards, caused a film or sheen upon or discoloration of the surface of the water and/or its adjoining shorelines, and/or caused a sludge or emulsion to be deposited beneath the surface of the water(s) and/or upon the adjoining shorelines of Sandstone Creek, a tributary of the Yellowstone River.
34. EPA learned of the discharge referenced in paragraph 31 above after Respondent reported the discharge to the United States Coast Guard National Response Center (NRC) on or about March 20, 2011 (NRC Report No. 970639).

May 2, 2011 Discharge

35. One of the pipelines associated with the South Pine Field is the South Pine 32-29H well flow line (South Pine Flow Line).
36. On or about May 2, 2011, Respondent discovered a discharge of 40 barrels of crude oil and 40 barrels of produced water from the South Pine Flow Line. The release occurred at SW/4, NE/4, Section 29 T12N, R57E, in Wibaux County, Montana, Lat/Long 46.750224°N, 104.566842°W, when the fiberglass flow line was severed.
37. The discharge described in paragraph 36 above surfaced 0.3 miles southwest from the well location and flowed 2.37 miles in an easterly direction to Cedar Creek. A light colored sheen continued for approximately 4.1 miles on Cedar Creek.
38. The discharge referenced in paragraph 36 above violated water quality standards, caused a film or sheen upon or discoloration of the surface of the water and/or its adjoining shorelines, and/or caused a sludge or emulsion to be deposited beneath the surface of the water(s) and/or upon the adjoining shorelines of Cedar Creek, a tributary of the Yellowstone River.
39. EPA learned of the discharge referenced in paragraph 36 above after Respondent reported the discharge to the NRC on or about May 2, 2011 (NRC Report No. 974665).

May 10, 2011 Discharge

40. One of the pipelines associated with the Gas City Tank Battery is the Gas City Section 3 Shipping Line (Gas City Line).
41. On or about May 10, 2011, Respondent discovered a discharge of 5 barrels of crude oil from the Gas City Line. The release occurred at NE/4, SW/4, Section 3 T14N, R54E, Lat/Long 46.9215°N, 104.7452°W, in Dawson County, Montana. The release occurred when the fiberglass flow line was severed.

42. The discharge described in paragraph 41 above flowed in a northerly direction down a drainage for 300 yards where it entered Cedar Creek, a tributary of the Yellowstone River, and migrated for 2.5 miles.
43. The discharge referenced in paragraph 41 above violated water quality standards, caused a film or sheen upon or discoloration of the surface of the water and/or its adjoining shorelines, and/or caused a sludge or emulsion to be deposited beneath the surface of the water(s) and/or upon the adjoining shorelines of Cedar Creek, a tributary of the Yellowstone River.
44. EPA learned of the discharge referenced in paragraph 41 above after Respondent reported the discharge to the NRC on or about May 10, 2011 (NRC Report No. 975900).

SPCC

45. On or about March 12, 2012, EPA sent Respondent an information request under section 308 of the CWA, 33 U.S.C. § 1318, to investigate the discharges referenced in paragraphs 31, 36 and 41 above.
46. On or about April 23, 2012, Denbury provided a copy of its SPCC plan to EPA in response to the information request referenced in paragraph 45 above.
47. On or about June 12, 2012, EPA determined, following a review of the information provided by Respondent pursuant to the information request referenced in paragraph 45 above that Respondent's SPCC plan was deficient and therefore in violation of the SPCC requirements of 40 C.F.R. part 112.
48. On June 28, 2012, EPA sent a list of SPCC plan deficiencies, via email, to Respondent. The deficiencies included:
 - a. The plan did not contain the language and signature expressing full approval of management at a level of authority to commit the necessary resources to fully implement the plan, in violation of 40 C.F.R. § 112.7.
 - b. The plan did not include the complete physical layout of the facilities covered by the plan, in violation of 40 C.F.R. § 112.7(a)(3).
 - c. The plan did not adequately provide information regarding the appropriate containment and/or diversionary structures or equipment to prevent a discharge, in violation of 40 C.F.R. § 112.7(c).
 - d. The plan did not address disposal of recovered materials in accordance with applicable legal requirements, in violation of 40 C.F.R. § 112.7(a)(3)(v).
 - e. The plan did not discuss flowlines without secondary containment and did not include a contingency plan or written commitment of resources to expeditiously control and remove

any quantity of oil discharged that might be harmful, in violation of 40 C.F.R. § 112.9(d)(3)(i) & (ii).

49. On or about December 21, 2012, Respondent submitted a revised SPCC plan to EPA. On February 5, 2013, EPA deemed the revised SPCC plan to be adequate.

VII. EPA'S FINDINGS OF VIOLATION

Count 1 – Violation of Section 311(b)(3) – March 20, 2011 Discharge

50. Paragraphs 1 through 49 of this CCCA are re-alleged and incorporated herein by reference.
51. The release of crude oil referenced in paragraph 31 above was at all relevant times a “discharge” within the meaning of section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2).
52. The discharged crude oil referenced in paragraph 31 above was at all relevant times “oil” within the meaning of section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).
53. The oil that was discharged into Sandstone Creek, which is a tributary of the Yellowstone River, and upon its adjoining shorelines as a result of the crude oil release referenced in paragraph 31 above was discharged in “quantities as may be harmful” within the meaning of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3.
54. Therefore, Respondent’s discharge of oil referenced in paragraph 31 above constitutes a violation of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

Count 2 – Violation of Section 311(b)(3) – May 2, 2011 Discharge

55. Paragraphs 1 through 49 of this CCCA are re-alleged and incorporated herein by reference.
56. The release of crude oil and produced water referenced in paragraph 36 above was at all relevant times a “discharge” within the meaning of section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2).
57. The discharged crude oil and produced water referenced in paragraph 36 above was at all relevant times “oil” within the meaning of section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).
58. The oil that was discharged into Cedar Creek, which is a tributary of the Yellowstone River, and upon its adjoining shorelines as a result of the crude oil and produced water release referenced in paragraph 36 above was discharged in “quantities as may be harmful” within the meaning of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3.

59. Therefore, Respondent's discharge of oil and produced water referenced in paragraph 36 above constitutes a violation of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

Count 3 – Violation of Section 311(b)(3) – May 10, 2011 Discharge

60. Paragraphs 1 through 49 of this CCA are re-alleged and incorporated herein by reference.

61. The release of crude oil referenced in paragraph 41 above was at all relevant times a “discharge” within the meaning of section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2).

62. The discharged crude oil referenced in paragraph 41 above was at all relevant times “oil” within the meaning of section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).

63. The oil that was discharged into Cedar Creek, a tributary of the Yellowstone River, and upon its adjoining shorelines as a result of the release of crude oil referenced in paragraph 41 above was discharged in “quantities as may be harmful” within the meaning of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3.

64. Therefore, Respondent's discharge of oil referenced in paragraph 41 above constitutes a violation of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

Count 4 – Failure to Implement a SPCC Plan in Accordance with 40 C.F.R. Part 112

65. Paragraphs 1 through 49 of this CCA are re-alleged and incorporated herein by reference.

66. Respondent failed to implement its SPCC plan in accordance with 40 C.F.R. part 112, as required by 40 C.F.R. § 112.3, because Respondent failed to implement all of the requirements of 40 C.F.R. part 112, as described in paragraph 48 above.

67. The deficiencies identified in Respondent's SPCC plan described in paragraph 48 above constitute a violation of section 311(j), 33 U.S.C. § 1321(j), and 40 C.F.R. part 112.

VIII. CIVIL PENALTY

68. Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. part 19 authorize the assessment of a Class II civil penalty for violations of sections 311(b)(3) and 311(j) of the CWA, 33 U.S.C. §§ 1321(b)(3) and 1321(j).

69. Pursuant to section 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6)(A), and after consideration of the facts of this case as they relate to the factors set forth in section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), EPA has determined that a civil penalty of ninety-nine thousand nine-hundred fifty and no/100 dollars (\$99,950.00) is appropriate to settle this matter.

70. Respondent consents and agrees to pay a civil penalty in the amount of ninety-nine thousand nine-hundred fifty and no/100 dollars (\$99,950.00) in the manner described below:

- a. Payment shall be in a single payment of \$99,950.00, due no later than thirty (30) calendar days from the date of the Final Order. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Time to be considered as received that day.
- b. The payment shall be made by remitting a check or making a wire transfer or on-line payment. If paying by check, Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notations "OSLTF - 311" and the title and docket number of this case. The payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. Environmental Protection Agency
P.O. Box 979077
St. Louis, Missouri 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank
Government Lockbox No. 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
Contact: Craig Steffen, 513-487-2091, steffen.craig@epa.gov

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Beneficiary: US Environmental Protection Agency

If remitted through the Automated Clearing House (ACH) for receiving U.S. currency:

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 -- checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737
Contacts: REX (Remittance Express): 866-234-5681

If remitted online with a debit card or credit card: No user name, password, or account number is necessary for this option. Online payment can be accessed via WWW.PAY.GOV, entering SFO 1.1 in the form search box on the left side of the screen, opening the form, and following the directions on the screen.

Copies of the check or record of payment shall be sent to:

Christopher Ajayi
U.S. Environmental Protection Agency (8ENF-UFO)
1595 Wynkoop Street
Denver, Colorado 80202-1129

and

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

A transmittal letter identifying the case title and docket number must accompany the remittance and copies of the check.

71. If the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received.
72. A handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is

not received within 30 days of the due date. Payments are first applied to outstanding handling charges, second to penalty assessments, third to accrued interest, and then to the outstanding principal amount.

73. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

IX. PUBLIC NOTICE

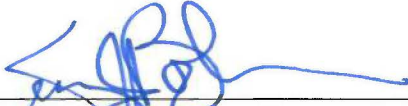
74. As required by section 311(6)(C)(i) of the CWA, 33 U.S.C. § 1321(6)(C)(i), and 40 C.F.R. § 22.45, EPA will provide public notice and a reasonable opportunity to comment on the penalty that Respondent has agreed to pay in this matter. EPA may modify or withdraw its consent to this CCCA if comments received disclose facts or considerations which indicate that this CCCA is inappropriate, improper, or inadequate.
75. If comments received during the public comment period do not require modification or withdrawal by EPA from this CCCA, the parties agree to submit this CCCA to the Regional Judicial Officer for Region 8 following the close of the public comment period specified in 40 C.F.R. § 22.45, with a request that it be incorporated into a Final Order.

X. GENERAL PROVISIONS

76. Nothing in this CCCA shall relieve Respondent of the duty to comply with the CWA and any regulation, order, or permit issued pursuant to the CWA.
77. Any failure by Respondent to comply with this CCCA shall constitute a breach of this CCCA and may result in referral of the matter to the United States Department of Justice for enforcement of this CCCA and such other relief as may be appropriate.
78. Nothing in this CCCA shall be construed as a waiver by EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of any failure by Respondent to comply with this CCCA.
79. Each party shall bear its own costs and attorneys' fees in connection with this matter.

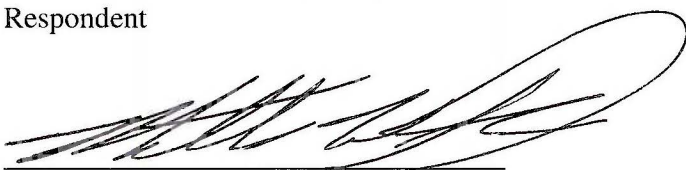
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant

Date: 3/16/16

By: 
Suzanne A. Bohan
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice

DENBURY ONSHORE, LLC,
Respondent

Date: 3/8/2016

By: 
Matthew Dahan
Vice President – North Region Production Operations

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8
1595 Wynkoop Street; Denver, CO 80202-1129**

PUBLIC NOTICE AND OPPORTUNITY TO COMMENT ON CLEAN WATER ACT SETTLEMENT

Action: EPA is providing notice of a Combined Complaint and Consent Agreement with penalty assessment and the opportunity for public comment on the proposed administrative penalty assessment against Denbury Onshore, LLC for discharges of oil and produced water into waters of the U.S and for an inadequate Spill Prevention, Control and Countermeasure Plan.

Summary: EPA is authorized in Class II proceedings under section 311(b)(6) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6), to issue orders assessing civil penalties for violations of the Act and its implementing regulations, after providing the person subject to the penalty notice of an opportunity for a hearing, and after providing the public with notice of the proposed penalty, and the opportunity to submit written comments and to participate in a Class II penalty proceeding (hearing), if any. The deadline for submitting public comment is thirty (30) calendar days after issuance of this notice.

On March 17, 2016, EPA filed a Combined Complaint and Consent Agreement pursuant to section 311(b)(6)(B)(ii) of the Act. Pursuant to section 311(b)(6)(C)(i) of the Act, and 40 C.F.R. § 22.45, EPA hereby notifies the public of this proposed penalty assessment:

In the matter of: Denbury Onshore, LLC
 5320 Legacy Drive
 Plano, Texas 75024

EPA Docket Number: CWA-08-2016-0006

Proposed penalty in the Complaint: \$99,950.00

Alleged violations: Three separate oil and/or produced water spills in March and May 2011, resulting in the discharge of approximately 40 barrels of produced water and 50 barrels of crude oil, and for an inadequate Spill Prevention, Control and Countermeasure (SPCC) plan. A portion of the oil and/or produced water impacted Cedar Creek and Sandstone Creek, tributaries of the Yellowstone River, in violation of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3). The SPCC plan for the three facilities at which the spills occurred contained several deficiencies in violation of 311(j) of the CWA, 33 U.S.C § 1321(j).

Written comments on the Combined Complaint and Consent Agreement are encouraged and will be accepted at the address listed below for a period of thirty (30) calendar days after the publication of this notice. Written comments submitted by the public, as well as information submitted by Denbury Onshore, LLC will be available for public review, subject to the provisions of law restricting the disclosure of confidential information. Any person submitting written comments has a right to participate in a hearing, if one is held. The Combined Complaint and Consent Agreement is available for review between 9:00 a.m. and 4:00 p.m. at the address listed below and on the internet at: <http://yosemite.epa.gov/oa/rhc/epaadmin.nsf>.

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 Combined Complaint and Consent Agreement, or other documents in this proceeding (such as the regulations in 40 C.F.R. part 22, which establish procedures for hearings), or to comment upon the proposed penalty assessment, or any other aspect of the matter, should contact the Regional Hearing Clerk identified above. No action will be taken by EPA to finalize a settlement in this matter until thirty (30) calendar days after this public notice.