

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2014 SEP 30 PM 12: 20

IN THE MATTER OF:)
)
BP America Production Company,)
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)
)
Respondent.)

FILED
EPA REGION VIII
HEARING CLERK
COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING
Docket No. CWA-08-2014-0037

In this Complaint and Notice of Opportunity for Hearing (Complaint), the United States Environmental Protection Agency, Complainant in this matter, proposes to assess a civil administrative penalty against BP America Production Company (Respondent).

JURISDICTIONAL ALLEGATIONS

1. This Complaint is issued under the authority vested in the EPA by section 309(g) of the Clean Water Act (Act), 33 U.S.C. § 1319(g). The authority to issue this Complaint has been delegated to the undersigned official.
2. This proceeding is subject to the EPA’s Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. part 22, a copy of which is being provided to the Respondent with this Complaint.

GENERAL ALLEGATIONS

3. The Respondent is a Delaware corporation.
4. The Respondent is a “person” as that term is defined in section 502(5) of the Act, 33 U.S.C. § 1362(5).
5. The Respondent owns and/or operates a pipeline known as the Y#1 Lateral (Pipeline) located in the Northeast ¼ of the Northwest ¼, Section 13, Township 33 North, Range 7 West, LaPlata County, Colorado, within the exterior boundaries of the Southern Ute Indian Reservation (Reservation).

6. The Pipeline transports a two-phase gas and water stream consisting of coal bed methane and water produced as a waste product from oil and/or gas drilling operations.

7. On or about March 15, 2013, and for an unknown number of days prior to that date, the Respondent discharged unknown quantities (between five and 200 barrels) of produced water from the Pipeline into Spring Creek and/or an unnamed tributary of Spring Creek and/or wetlands adjacent to Springs Creek and/or adjacent to its unnamed tributary.

8. The EPA learned of the discharge referenced in paragraph 7, above, upon receiving a letter dated May 17, 2013, from URS Corporation, on behalf of the Respondent, requesting water quality certification pursuant to section 401 of the Act, 33 U.S.C. § 1341, in connection with a project to replace the Pipeline that had caused the discharge.

9. Prior to the letter described in paragraph 8, above, the Respondent had not notified the EPA or National Response Center of the discharge referenced in paragraph 7, above.

10. The certification referenced in paragraph 8, above, related to a pre-construction notice (PCN) that URS Corporation provided on the same date to the United States Army Corps of Engineers (Corps) for the replacement of fill and temporary impact to the waters referenced in paragraph 7, above. Submittal of the PCN was a requirement for obtaining authorization for placement of that fill pursuant to Nationwide Permit No. 3 (NWP No. 3). NWP No. 3 is a type of general permit that section 404(e) of the Act, 33 U.S.C. § 1344(e), authorizes the Corps to issue for certain discharges of dredged or fill material. The Corps issued the relevant version of NWP No. 3 as described in 77 Fed. Reg. 10184, 10191-10193 (February 21, 2012).

11. The unnamed tributary referenced in paragraph 7, above, is at least an intermittent tributary of Spring Creek.

12. The unnamed tributary referenced in paragraph 7, above, is a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and a “water of the United States” as defined in 40 C.F.R. § 122.2.

13. Spring Creek flows year-round most years and is, therefore, at least seasonal.

14. Spring Creek is a tributary of the Pine River, which is sometimes known as the Los Piños River.

15. Spring Creek is a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and a “water of the United States” as defined in 40 C.F.R. § 122.2.

16. The Pine River is navigable-in-fact.

17. The Pine River is a perennial stream.

18. The Pine River originates in Colorado outside of the Reservation, enters and flows through the Reservation, and flows out of the Reservation into New Mexico. The Pine River eventually enters the Navajo Reservoir, which is an impoundment of the Pine River, the Piedra River, and the San Juan River.

19. The Pine River is a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and a “water of the United States” as defined in 40 C.F.R. § 122.2.

20. The San Juan River is navigable-in-fact.

21. The San Juan River is a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and a “water of the United States” as defined in 40 C.F.R. § 122.2.

22. The wetlands adjacent to Spring Creek and/or adjacent to the tributary of Spring Creek, as referenced in paragraph 7, above, are “navigable waters” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and “waters of the United States” as defined in 40 C.F.R. § 122.2.

23. The produced water referenced in paragraph 7, above, constitutes a “pollutant” as defined in section 502(6) of the Act, 33 U.S.C. § 1362(6).

24. The produced water referenced in paragraph 7, above, was discharged from a “point source” as defined in section 502(14) of the Act, 33 U.S.C. § 1362(14).

25. The discharge described in paragraph 7, above, constituted a discharge of a pollutant as defined in section 502(12) of the Act, 33 U.S.C. § 1362(12).

26. The discharge described in paragraph 7, above, was not authorized by any permit issued pursuant to the Act or by any provision of the Act.

27. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits any person from discharging any pollutant into navigable waters except as in compliance with sections 301, 312, 306, 307, 308, 402, and 404 of the Act, 33 U.S.C. §§ 1311, 1312, 1316, 1317, 1318, 1342, and 1344.

28. The discharge described in paragraph 7, above, constitutes a violation of section 301(a) of the Act, 33 U.S.C. § 1311(a), for each day of the discharge’s occurrence. For each day of violation, the Respondent is liable for civil administrative penalties pursuant to section 309(g) of the Act, 33 U.S.C. § 1319(g).

PROPOSED PENALTY

Pursuant to section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. part 19, the Respondent is liable for maximum civil administrative penalties of \$16,000 per day during which the discharge referenced in paragraph 7, above, continued, up to a total of \$177,500. The EPA proposes to assess an administrative penalty of **\$100,000** against the Respondent. In proposing this penalty amount, the EPA has considered the applicable statutory penalty factors.

Based on section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), the applicable statutory factors 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.

QUICK RESOLUTION

The Respondent may resolve this administrative penalty proceeding 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, the Respondent need not file an answer. Alternatively, as allowed by 40 C.F.R. § 22.18(b), the Respondent may file a statement with the Regional Hearing Clerk within thirty (30) days of receipt of this Complaint agreeing to pay the full assessed penalty and may make the penalty payment within sixty (60) days of receiving this Complaint. (Note: In this Complaint, the number of days in a time period is computed according to 40 C.F.R. § 22.7(a).)

The payment shall be made by remitting a check or by making a wire transfer or on-line payment. The check or other payment shall designate the name and docket number of this case, be in the amount stated in the preceding paragraph, and be payable to "Treasurer, United States of America."

If remitted by regular U.S. mail:

U.S. Environmental Protection Agency / Fines and Penalties
Cincinnati Finance Center
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
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

Contact: Craig Steffen, 513-487-2091 or 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

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

If remitted through the Automated Clearing House (ACH) for receiving US 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: John Schmid (202-874-7026) and REX (Remittance Express)
1-866-234-5681

If remitted on-line with a debit card or credit card: No user name, password, or account number is necessary for this option. On-line 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.

For additional information on making payments to the EPA: Please see <http://www.2.epa.gov/financial/makepayment>.

At the time of payment, a copy of the check (or notification of other type of payment) shall also be sent to:

Natasha Davis (8ENF-W-NP)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

and

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

Payment of the penalty in this manner does not relieve the Respondent of the obligation to comply with the requirements of the Act and its implementing regulations. Payment of the penalty in

this manner does, however, constitute consent by the Respondent to the assessment of the proposed penalty and a waiver of the Respondent's right to a hearing on this matter.

OPPORTUNITY TO REQUEST A HEARING

The Respondent has the right to a public hearing before an EPA judicial officer to disagree with any allegation the EPA has made in this Complaint and/or the appropriateness of the penalty the EPA has proposed. To assert its right to a hearing, the Respondent must file a written answer (an original and one copy) with the Regional Hearing Clerk of EPA Region 8 within 30 days of receiving this Complaint.

The answer and one copy of the answer must be sent to:

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

A copy of the answer must also be sent to the following attorney:

Peggy Livingston, Enforcement Attorney (8ENF-L)
U.S. EPA Region 8, Legal Enforcement Program
1595 Wynkoop Street
Denver, Colorado 80202-1129
Telephone: (303) 312-6858, or 1-800-227-8917, ext. 6858

The answer must clearly admit, deny or explain the factual allegations of this Complaint, the grounds for any defense, the facts the Respondent disputes, and whether it requests a public hearing. Please see 40 C.F.R. § 22.15 for more information on what must be in the answer.

If the Respondent fails to file an answer, it will waive its right to contest any of the allegations set forth in this Complaint. If the Respondent fails to file an answer or pay the full proposed penalty, a default judgment may be entered against the Respondent pursuant to 40 C.F.R. § 22.17. This judgment may impose the full penalty amount proposed in this Complaint.

SETTLEMENT CONFERENCE

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. If the Respondent wishes to pursue the possibility of settling this matter, or it has any other questions, the Respondent (or its counsel) should contact Peggy Livingston, Enforcement Attorney, at the address and/or telephone number given above. **Contacting this attorney or requesting a settlement conference does NOT substitute for the requirement to file an answer. Nor does it extend the 30-day period for filing an answer and requesting a hearing.**

PUBLIC NOTICE

As required by section 309(g)(4) of the Act, 33 U.S.C. § 1319(g)(4), prior to assessing a civil penalty, the EPA will provide public notice of the proposed penalty and a reasonable opportunity for the public to comment on the matter and, if a hearing is held, to be heard and present evidence.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Complainant.

Issued: SEP 30 2014, 20 .

Eddie A. Sierra

for

Suzanne J. Bohan
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice