





















PENGLD-Beyonne, N. J.
**GOVERNMENT
EXHIBIT**
2



FENGAD-Bayonne, N. J. **GOVERNMENT
EXHIBIT
3**



















PENGLAID-Beyonce, N. J.
**GOVERNMENT
EXHIBIT**
4





PENICAD-Bejonne, N. J.
**GOVERNMENT
EXHIBIT
5**



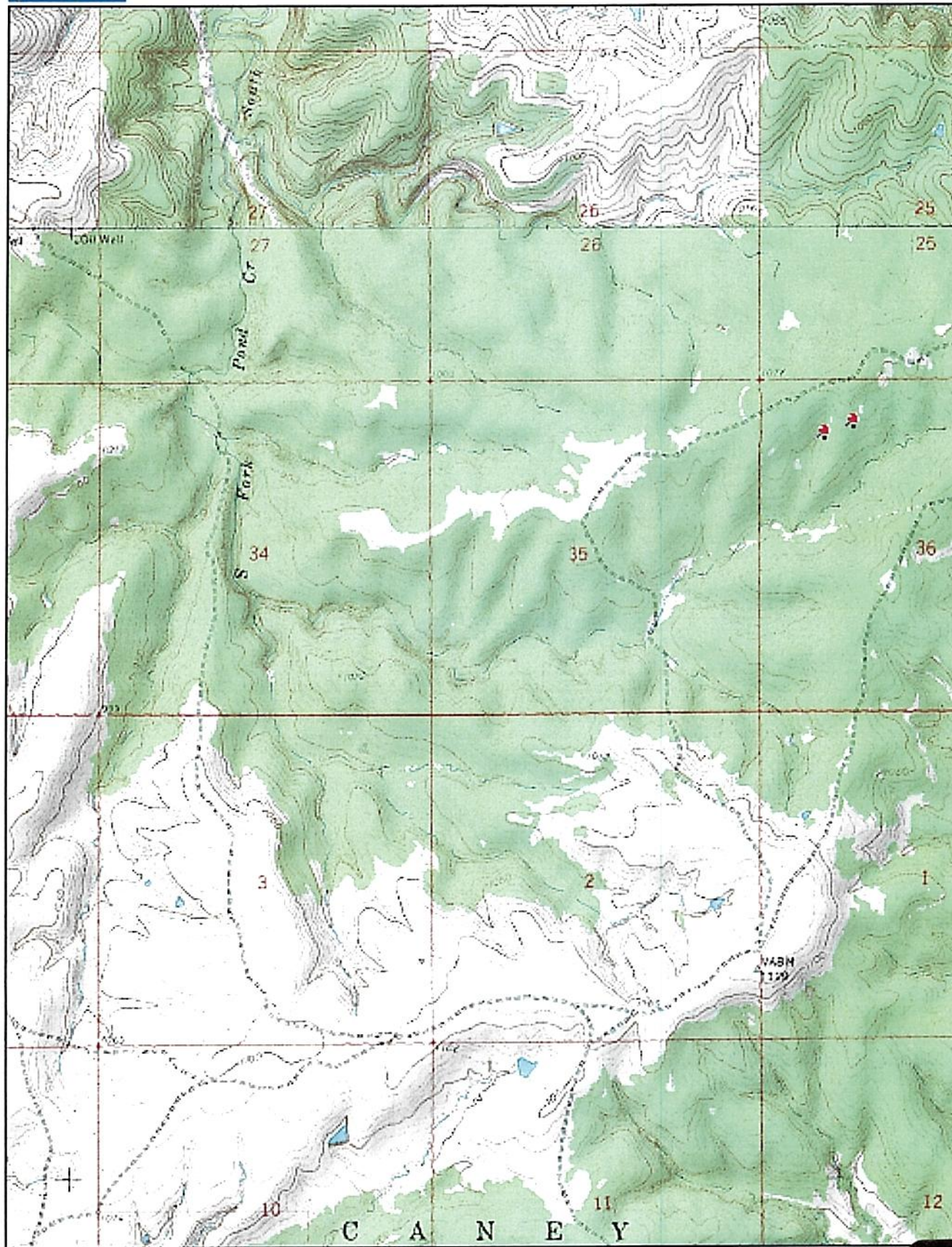




PENAGAD-Bayonne, N. J.
GOVERNMENT
EXHIBIT
6



PERICID-Bryenne, M. J. **GOVERNMENT EXHIBIT**
7



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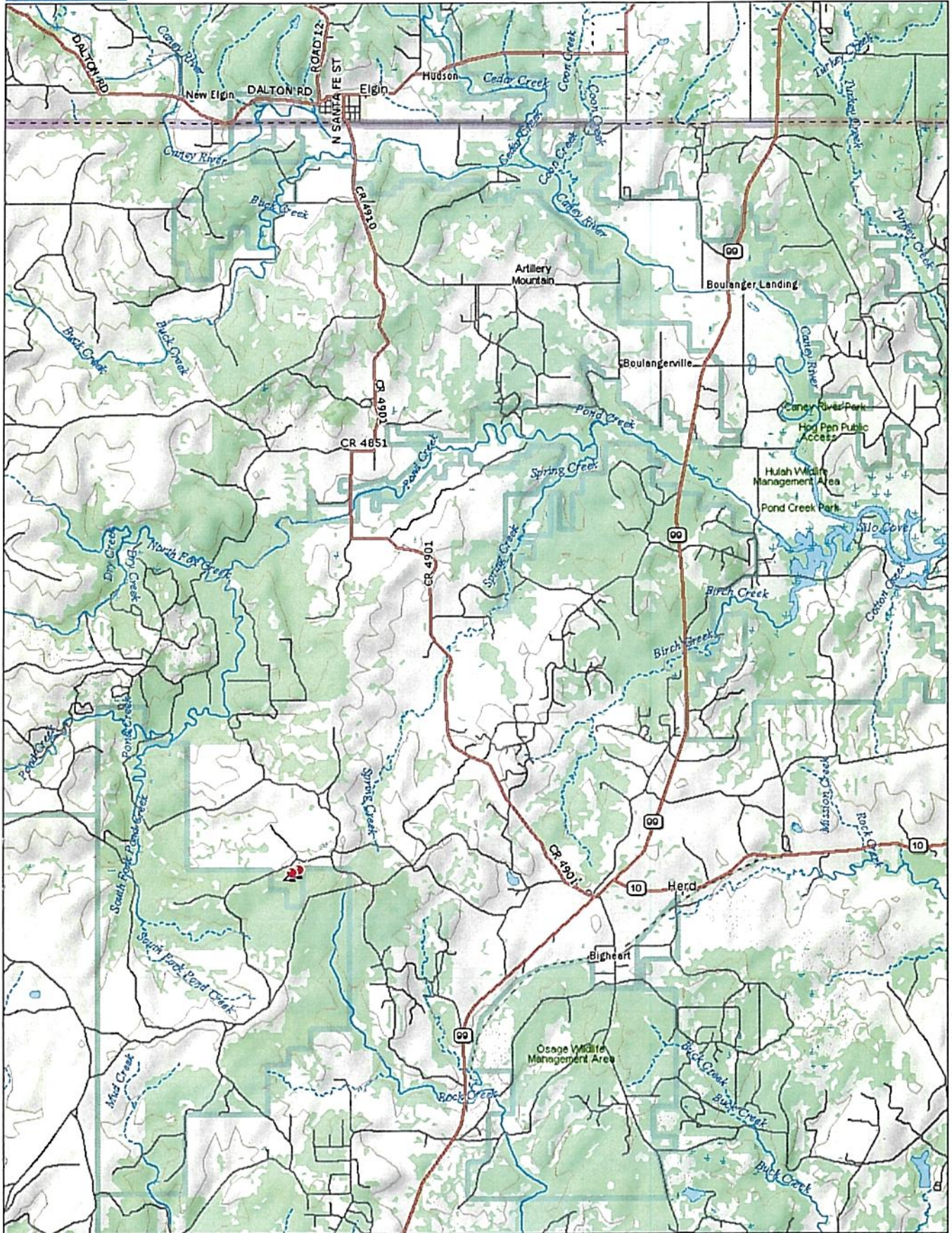
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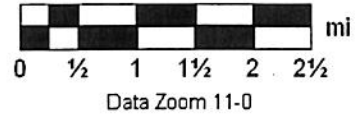


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OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

Via Facsimile and U.S. Mail

September 19, 2007

Patrick S. Adams, President
Altec Testing & Engineering, Inc.
323 Country Road 3450
Pawhuska, Oklahoma 74056

Dear Mr. Adams:


I am writing you regarding Altec's activities in the Osage County Western Wall Wildlife Management Area (the "WMA"). The WMA is state-owned property that is regulated and managed by the Oklahoma Department of Wildlife Conservation. State law provides that prior to entering the WMA, Altec first must receive permission from the Department and comply with all applicable regulations. Altec has never received this permission and has not complied with the applicable regulations.

In early August 2007, Altec unlawfully entered the WMA for the purpose of drilling an oil well. Altec's operations at the site have caused significant environmental damage. Furthermore, I am advised that Altec has plans to re-enter the site to perform more drilling operations.

Please be advised that Altec, its employees, and its agents are expressly prohibited from entering the WMA. Cease and desist any and all present and future operations at the WMA.

If you have any questions please contact me at (405) 522-4405.

Sincerely,


Daniel P. Lennington
Assistant Attorney General

cc: Chris Holloway



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

Via Facsimile and US Mail

September 20, 2007

Patrick S. Adams, President
Altec Testing & Engineering, Inc.
323 Country Road 3450
Pawhuska, Oklahoma 74056

Dear Mr. Adams:

In my correspondence from yesterday, I asked you to cease and desist your operations on the Osage County Western Wall Wildlife Management Area (the "WMA"). I made this request because your operations at the site are unlawful and have caused a significant amount of environmental damage. I also made this request because I had information that Altec planned to return to the site to conduct more operations, which could have resulted in the same type of damage that was done in August and earlier this month.

Upon receiving this letter, you called me and explained that your employees were presently working on-site. You also told me that if Altec abandoned the site now, then the site would present risks to human health and safety, as well as environmental risks. In short, abandoning the site could cause serious problems and make a bad situation worse.

After our phone call, we had a conference call with Alan Peoples of the Oklahoma Department of Wildlife Conservation. During that call, you agreed to cleanup the site at Altec's expense and abate any and all unsafe conditions as soon as possible. You agreed to (1) finish the casing, (2) cement the casing, and (3) cap the well, as soon as possible. You believe this should take no more than 24 hours. You agreed to notify the Department once the well is capped. After this is completed, you agreed to work with the Department to cleanup the site. This will include closing the pits, removing contaminated soils, and taking any other actions necessary to cleanup the site and correct the damage that Altec has done.

Furthermore, you agreed that there will be no further well drilling or completion activity at the site unless and until this matter is completely resolved with the Department, and only if the Department specifically agrees to allow you to continue operations at the site. It is my understanding that the Department will not agree to any further operations at the site until the site is cleaned up, Altec enters into the proper agreements and stipulations

with the Department, and all of the surface damages are paid. The Department may very well have other requirements and prerequisites, but you will have to address that with them directly at the appropriate time.

Your point-of-contact for the cleanup will be John Rempe and Buck Ray of the Department. Also, to the extent that you are contacted by USEPA or USFWS, please cooperate with their representatives also.

I also informed you that these steps are necessary to abate a present and immediate danger to human health and the environment. The actions that you will take in this regard do not release you from any liability that you may have incurred, or could possibly incur, with respect to the State of Oklahoma and any other governmental agency.

I also advised you to seek legal counsel, and that once representation is obtained, I will communicate with your attorney. If you have any questions please contact me at (405) 522-4405.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Lenington', written over the word 'Sincerely'.

Daniel P. Lenington
Assistant Attorney General

cc: Chris Holloway

Fax

To: Matt Rudolph

Company: _____

Fax no: _____

From: KW SAWBORN

Date: 11-15-07

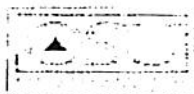
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Subject: _____

ALTEL

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Soil, Water & Forage Analytical Laboratory
 Oklahoma State University
 018 Agricultural Hall, Stillwater, OK 74078
 Email: Soils_Lab@mail.pss.okstate.edu



WATER QUALITY REPORT

OSAGE CTY EXT OFC	Name	LabID	476528
628 KIHEKAH	Osage UIC	CustomerCode	57
SECOND FLOOR	Location	SampleNo	10431
PAWHUSKA	OK - 1	Received Date	10/1/2007
(918) 287-4170		Report Date	10/15/2007

Test Results For Irrigation Water

---Cations---		---Anions---		---Other---	
Sodium(ppm)	5984.5	Nitrate-N(ppm)	<1	pH	4.2
Caicium(ppm)	928.9	Chloride(ppm)	12180.9	EC(µmhos/cm)	34800
Magnesium(ppm)	291.7	Sulfate(ppm)	59.9	Fe	
Potassium(ppm)	45	Boron(ppm)	1.9		
		BiCarbonate(ppm)			

---Derived Values---		---Derived Values(Cont'd)--	
Total Soluble Salts(TSS in ppm)	22568	Sodium Percentage	78.72%
Sodium Adsorption Ratio (SAR)	43.9	Hardness	3517.9
Potassium Adsorption Ratio (PAR)	0.2	Hardness Class	Very Hard
Residual Carbonates (meq)		Alkalinity (ppm as CaCO3)	

Interpretaion And Requirements

Water of this quality is not recommended for crop irrigation due to its high total soluble salts and/or sodium level.

- Boron toxicity may occur in poorly drained soils.

Will Cobby
 Signature

ALTEC
 Creek @ Secp.

Fax

To: Matt Rudolph

Company: _____

Fax no: _____

From: KW SAWBORN

Date: 11-15-07

Pages: _____

Subject: ALTEL

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Soil, Water & Forage Analytical Laboratory
 Oklahoma State University
 018 Agricultural Hall, Stillwater, OK 74078
 Email: Soils_lab@mail.pss.okstate.edu



SOIL SALINITY REPORT

OSAGE CTY EXT OFC	Name	LabID	476393
628 KIHEKAH	Osage UIC	CustomerCode	57
SECOND FLOOR	Location	SampleNo	10438
PAWHUSKA	W-D #1	Received Date	9/28/2007
(918) 287-4170		Report Date	10/10/2007

Test Results For Salinity Management :(1:1 Soil to water extraction and converted to saturate paste equivalent)

-----Cations-----		---Derived Values---	
Sodium(ppm)	4168.1	Total Soluble Salts(TSS in ppm)	19503
Calcium(ppm)	861.9	Sodium Adsorption Ratio (SAR)	35.5
Magnesium(ppm)	110.4	Potassium Adsorption Ratio (PAR)	0.3
Potassium(ppm)	64	Exchangeable Sodium Percentage (ESP)	33.7
		Exchangeable Potassium Percentage (EPP)	6.5

-----Other-----		--Additional--	
pH	6.8	EC	240.9
EC(µmhos/cm)	9850	BiCarbonate(ppm)	
Boron(ppm)	0.1		
Texture	Coarse		

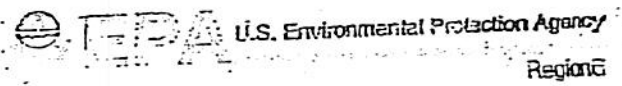
Interpretation And Requirements

Total soluble salt in this soil is about 7.3875 times higher than normal and sufficiently high to reduce yield of even salt tolerant crops. Exchangeable sodium is much higher than normal and may be responsible for poor water movement in soil. Salts can be leached downward out of the surface soil, if the soil has good drainage. Leaching will be aided by incorporation of 20 to 30 tons of organic matter per acre in the top 6 inches of soil. Incorporation of 5 tons of gypsum into the surface one to two inches will aid in removal of sodium and speed water movement into the soil. During the reclamation period avoid deep tillage such as moldboard plowing and establish a salt tolerant crop (barley, bermudagrass etc.) to provide ground cover for as much of the growing season as possible. If there is a white salty crust on the soil surface, delay planting the salt tolerant crop until the crust no longer forms during a soil drying cycle. Planting while the salty crust remains will likely result in poor stand establishment. The time for reclamation will depend upon the amount and quality of water that moves through the soil profile. Further information can be found in fact sheet 2226.

Will Weber
 Signature

Wildlife Dept.
 (u) Seep point / filled pit

Fax



To: Matt Rudolph

Company:

Fax no:

From: KW SAUBER

Date: 11-15-07

Pages:

Subject:

ALTEL

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Oklahoma State University - Soil, Water and Forage Analytical Laboratory



Soil, Water & Forage Analytical Laboratory
Oklahoma State University
048 Agricultural Hall, Stillwater, OK 74078
Email: Soils_lab@mail.pss.okstate.edu



WATER QUALITY REPORT

OSAGE CTY EXT OFC	Name	LabID	476530
628 KIHEKAH	Osage UIC	CustomerCode	57
SECOND FLOOR	Location	SampleNo	10432
PAWHUSKA	OK - 2	Received Date	10/11/2007
(918) 287-4170		Report Date	10/15/2007

Test Results For Irrigation Water

---Cations---		---Anions---		---Other---	
Sodium(ppm)	385.3	Nitrate-N(ppm)	<1	pH	5.1
Calcium(ppm)	95.1	Chloride(ppm)	858.8	EC(µmhos/cm)	2930
Magnesium(ppm)	33.6	Sulfate(ppm)	11.2	Fe	
Potassium(ppm)	13	Boron(ppm)	0.0		
		BiCarbonate(ppm)	2.3		

--Derived Values--		--Derived Values(Cont'd)--	
Total Soluble Salts(TSS in ppm)	1933.8	Sodium Percentage	69.06%
Sodium Adsorption Ratio (SAR)	8.6	Hardness	375.5
Potassium Adsorption Ratio (PAR)	0.2	Hardness Class	Very Hard
Residual Carbonates (meq)		Alkalinity (ppm as CaCO3)	1.9

Interpretation And Requirements

☐ This water is generally unsatisfactory for irrigation use. It may be used for irrigation only under very special conditions and on the advice of a technician trained in irrigation water use. Use of this water should be confined to occasional use as a supplemental source of water on well-drained soils. It is not recommended for use on medium and heavy textured soils.

☐ If this water is used extensively, it is recommended that a soil sample be obtained every few years from the irrigated fields to determine the extent to which sodium or salts may be accumulating and the need for special management practices.

Will Lobb
Signature

ALTEC

Creek downstream

Fax

To: Matt Rudolph

Company: _____

Fax no: _____

From: KW SAUBER

Date: 11-15-07

Pages: _____

Subject: ALTEL

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GOVERNMENT
EXHIBIT
14



Soil, Water & Forage Analytical Laboratory
 Oklahoma State University
 048 Agricultural Hall, Stillwater, OK 74078
 Email: Soils_lab@mail.pss.okstate.edu



SOIL SALINITY REPORT

OSAGE CTY EXT OFC	Name	LabID	476394
628 KHEKAH	Osage UIC	CustomerCode	57
SECOND FLOOR	Location	SampleNo	10439
PAWHUSKA	W-D #2	Received Date	9/28/2007
(918) 287-4170		Report Date	10/10/2007

Test Results For Salinity Management :(1:1 Soil to water extraction and converted to saturate paste equivalent)

-----Cations-----		---Derived Values---	
Sodium(ppm)	4252.0	Total Soluble Salts(TSS in ppm)	19859.4
Calcium(ppm)	907.5	Sodium Adsorption Ratio (SAR)	35.8
Magnesium(ppm)	99.7	Potassium Adsorption Ratio (PAR)	0.3
Potassium(ppm)	58	Exchangeable Sodium Percentage (ESP)	33.8
		Exchangeable Potassium Percentage (EPP)	6.2

-----Other-----		---Additional---	
pH	6.8		230.4
EC(µmhos/cm)	10030	BiCarbonate(ppm)	
Boron(ppm)	0.0		
Texture	Coarse		

Interpretation And Requirements

Total soluble salt in this soil is about 7.5225 times higher than normal and sufficiently high to reduce yield of even salt tolerant crops. Exchangeable sodium is much higher than normal and may be responsible for poor water movement in soil. Salts can be leached downward out of the surface soil, if the soil has good drainage. Leaching will be aided by incorporation of 20 to 30 tons of organic matter per acre in the top 6 inches of soil. Incorporation of 5 tons of gypsum into the surface one to two inches will aid in removal of sodium and speed water movement into the soil. During the reclamation period avoid deep tillage such as moldboard plowing and establish a salt tolerant crop (barley, bermudagrass etc.) to provide ground cover for as much of the growing season as possible. If there is a white salty crust on the soil surface, delay planting the salt tolerant crop until the crust no longer forms during a soil drying cycle. Planting while the salty crust remains will likely result in poor stand establishment. The time for reclamation will depend upon the amount and quality of water that moves through the soil profile. Further information can be found in fact sheet 2226.

W. H. Cobley
 Signature

Wildlife Dept.

Ⓞ Seep point / filled pit

INSPECTION REPORT

REPORT DATE: 10/2/2007

INCIDENT NO: 09212007-2

INSPECTION DATE: 9/21/2007

INVESTIGATOR: Kent Sanborn

LOCATION: NW 1/4, Sec. 36 , T 28N, R 9E

COUNTY: OSAGE

SPILL OR DISCHARGE DATE:

MATERIAL SPILLED: Brine

AMOUNT: UNKNOWN

REPORTED BY:

OWNER/OPERATOR: ALTEC TESTING AND ENGINEERING, INC.
6035 Fremont Street
Riverside, CA 92504-1114
951-367-9055

SURFACE OWNER: STATE OF OKLAHOMA

PHONE: Unknown

EMERGENCY HOTLINE NOTIFIED:

POINT SOURCE: DRILLING PITS

LATITUDE/LONGITUDE: 36 51.970N, 96 17.492W

RECEIVING WATER: ROCK CREEK TRIBUTARY

LATITUDE/LONGITUDE: 36 51.939N, 96 17.582W

INSPECTION OBSERVATIONS:

OPERATOR DRILLED WELL ON STATE LAND. 2 STORAGE PITS WERE CONSTRUCTED TO HOLD DRILLING FLUIDS. AT SOME POINT THE PITS BEGAN LEAKING OUT THE BOTTOM ALONG THE ROCK SHELF THEY WERE CONSTRUCTED ON. THEY WERE NOT LINED. BRINE ENTERED THE SMALL CREEK OVER A PERIOD OF WEEKS TO THE OBJECTION OF THE STATE. BIA THEN CLOSED THE PITS BY DRAINING AND BACKFILLING WITH DIRT. I THEN INSPECTED AND FOUND THE PITS RESTORED. THERE IS EVIDENCE OF BRINE IN THE CREEK. THERE IS ALSO A WET AREA NEXT TO THE CREEK THAT PROBABLY WAS THE DISCHARGE PATH. TSS IN THE CREEK WAS 30K PPM AND DROPPED TO ABOUT 2500 PPM ABOUT 200 YARDS SOUTH. I TOLD OPERATOR TO DIG A CONTAINMENT PIT TO CATCH ANY RUNOFF FROM THE SITE AND HAUL OFF WITH A TRUCK. AS OF TODAY THAT PIT WAS NOT DUG. RAIN IS EXPECTED TODAY.

HE WAS TOLD TO RESTORE THE SURFACE USING GYP AND COMPOST. I SUGGESTED HE TERRACE THE SITE TO PREVENT SOIL EROSION.

SUPPORTING VIDEO, PICTURES, OR SAMPLES: Photos

OTHER AGENCIES OR PARTIES CONTACTED OR INVOLVED:

BIA, OK DEPT OF WILDLIFE, AG (OK)

REGIONAL COMMENTS/INFORMATION OBTAINED:

Rudolph contacted Respondent on 10/3/07 and informed them of the inspection findings and the resulting enforcement actions.



**ALTEC TESTING AND ENGINEERING
NW 36 28N-9E OSAGE CO., OKLAHOMA
SEPTEMBER 21, 2007**

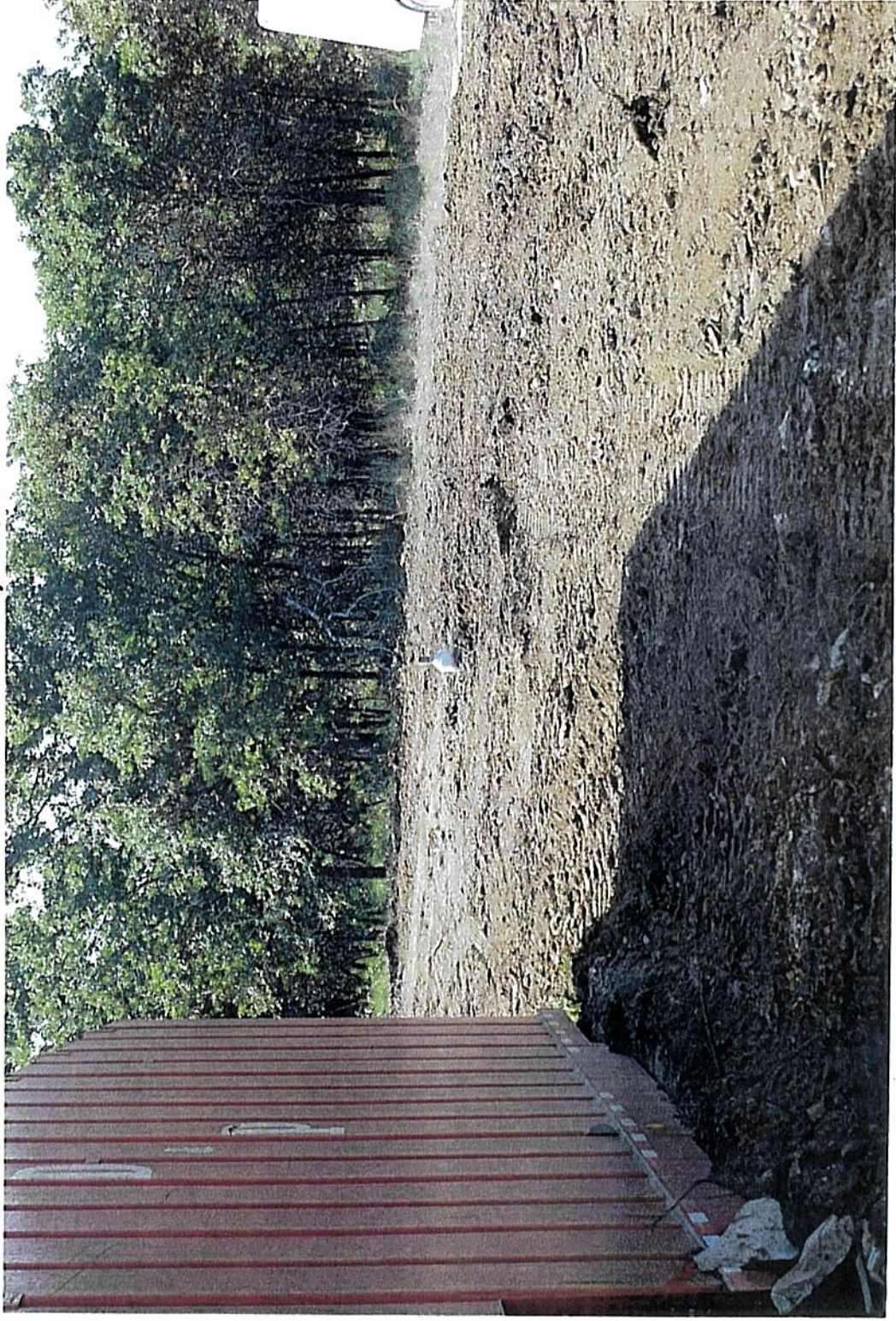


Photo 1 taken southwest. Newly drilled well. No production casing set yet.

**ALTEC TESTING AND ENGINEERING
NW 36 28N-9E OSAGE CO., OKLAHOMA
SEPTEMBER 21, 2007**



Photo 2 taken southwest. Old pit locations were present here before being filled with dirt.

**ALTEC TESTING AND ENGINEERING
NW 36 28N-9E OSAGE CO., OKLAHOMA
SEPTEMBER 21, 2007**

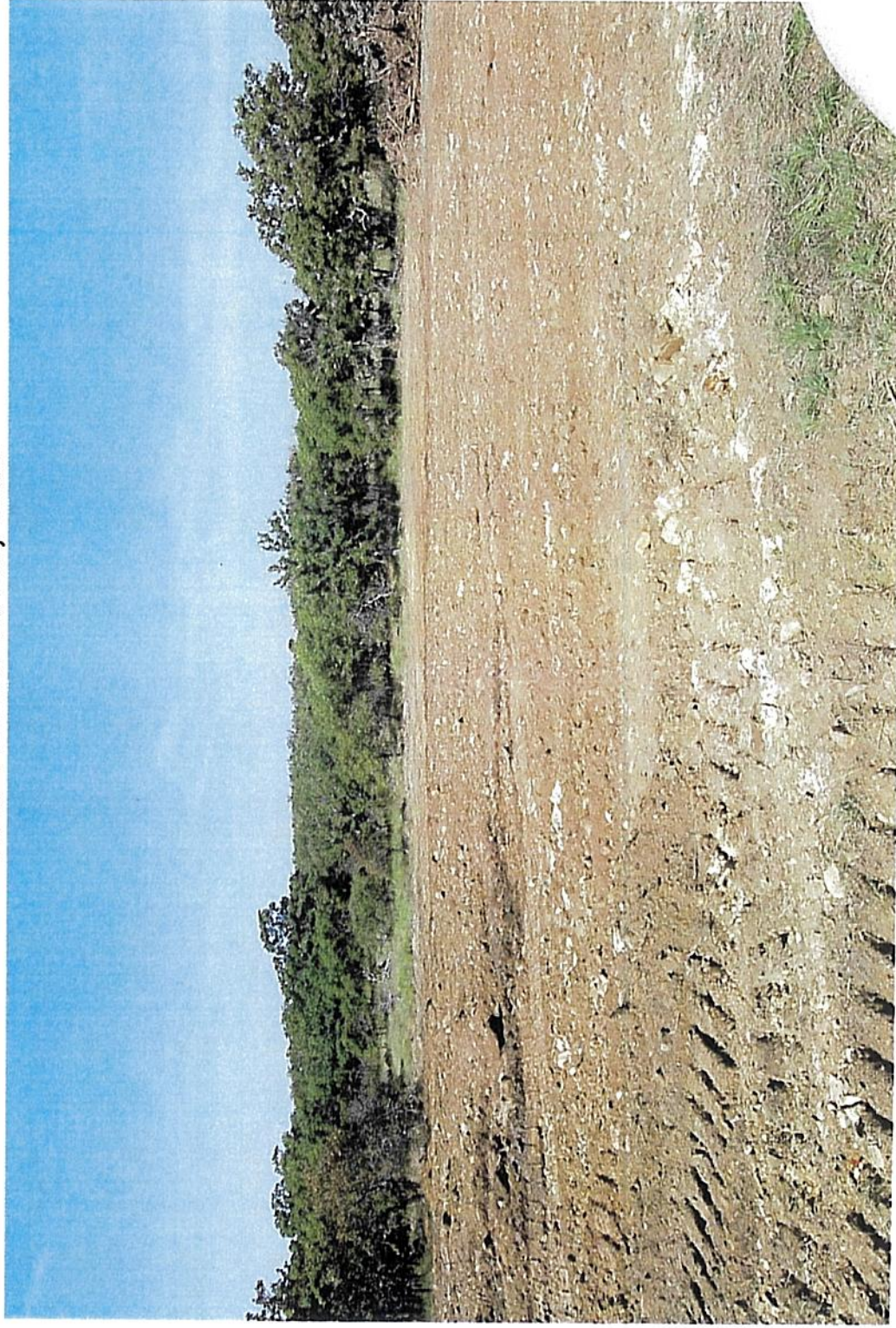


Photo 3 taken west. Location cleared for drilling. Some wet spots were pits were filled in.

**ALTEC TESTING AND ENGINEERING
NW 36 28N-9E OSAGE CO., OKLAHOMA
SEPTEMBER 21, 2007**

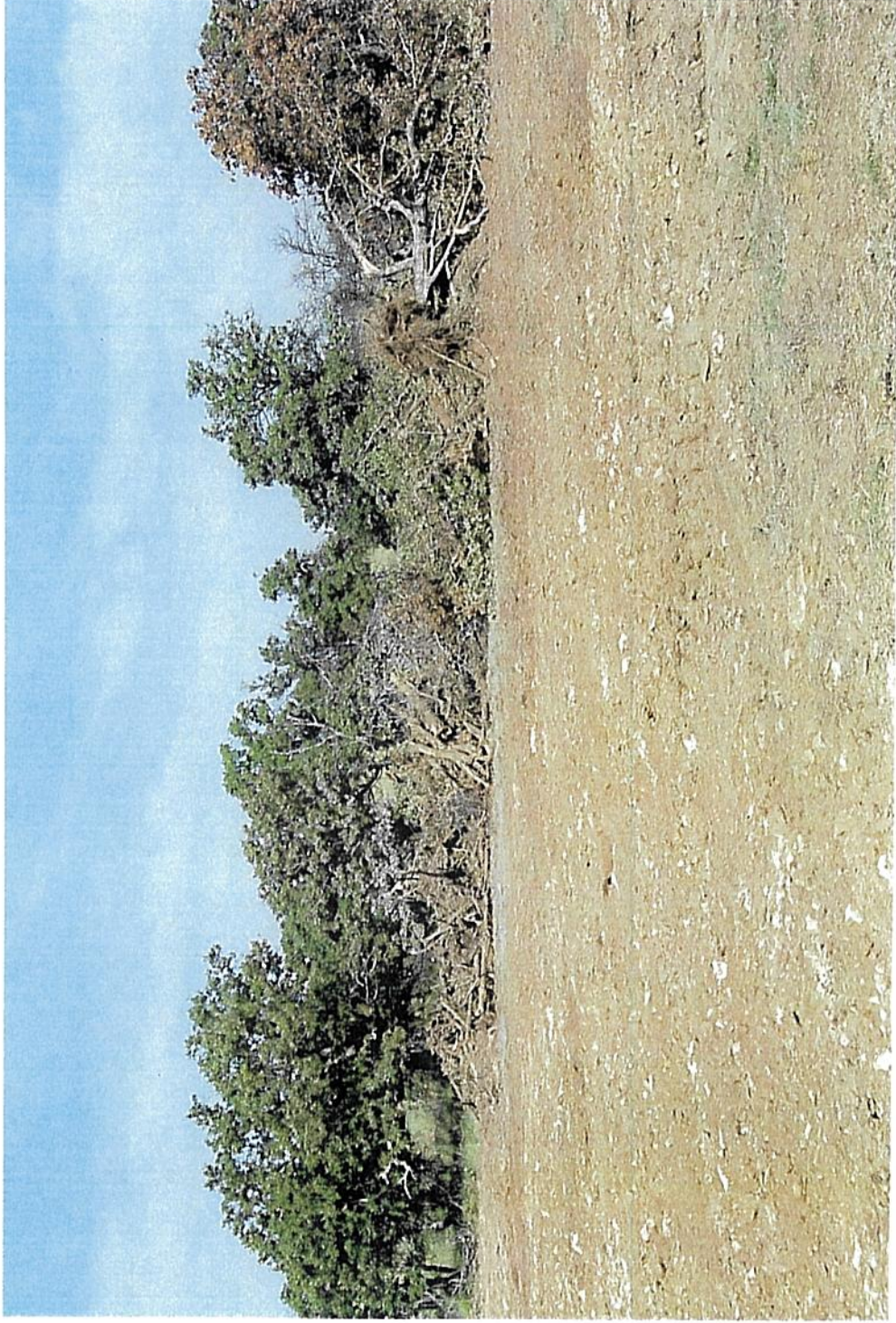


Photo 4 taken north. Trees were piled in one location on the north side of the drilling site.

**ALTEC TESTING AND ENGINEERING
NW 36 28N-9E OSAGE CO., OKLAHOMA
SEPTEMBER 21, 2007**



Photo 5 taken west. Close-up of soft and mushy area wet from pit soaked soils.

**ALTEC TESTING AND ENGINEERING
NW 36 28N-9E OSAGE CO., OKLAHOMA
SEPTEMBER 21, 2007**



Photo 6 taken west. Before pits were filled they reportedly seeped out their base here into the small creek. Note dead trees.

**ALTEC TESTING AND ENGINEERING
NW 36 28N-9E OSAGE CO., OKLAHOMA
SEPTEMBER 21, 2007**

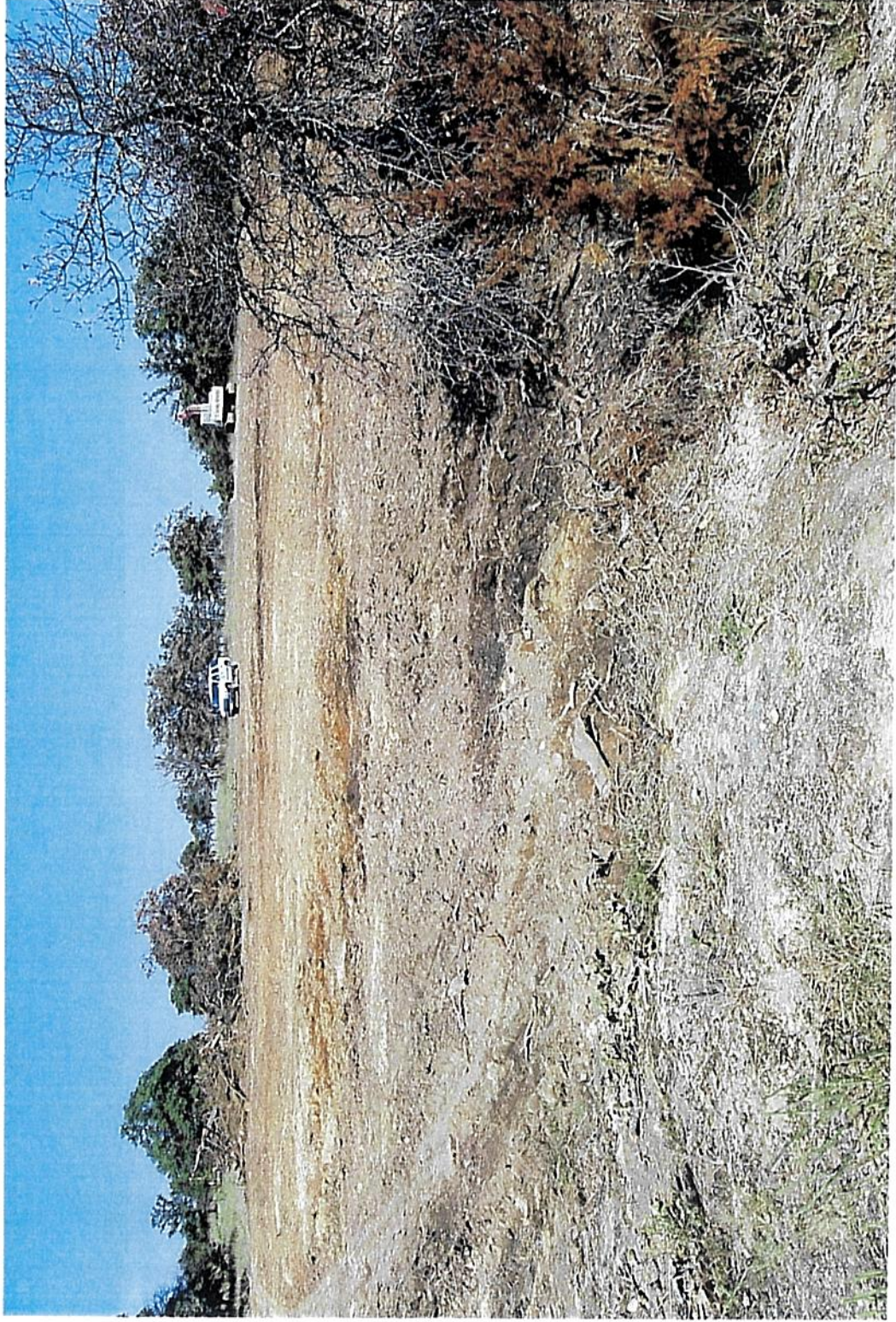


Photo 7 taken east. Reverse angle photo from creek entry point showing wet ground from seeps and size of drilling location.

**ALTEC TESTING AND ENGINEERING
NW 36 28N-9E OSAGE CO., OKLAHOMA
SEPTEMBER 21, 2007**



Photo 8 taken south. This part of the creek was drained by a tank truck. TSS was 30k ppm. No oil seen.

**ALTEC TESTING AND ENGINEERING
NW 36 28N-9E OSAGE CO., OKLAHOMA
SEPTEMBER 21, 2007**



Photo 9 taken southwest. Another part of the creek sucked out by tank truck.

**ALTEC TESTING AND ENGINEERING
NW 36 28N-9E OSAGE CO., OKLAHOMA
SEPTEMBER 21, 2007**

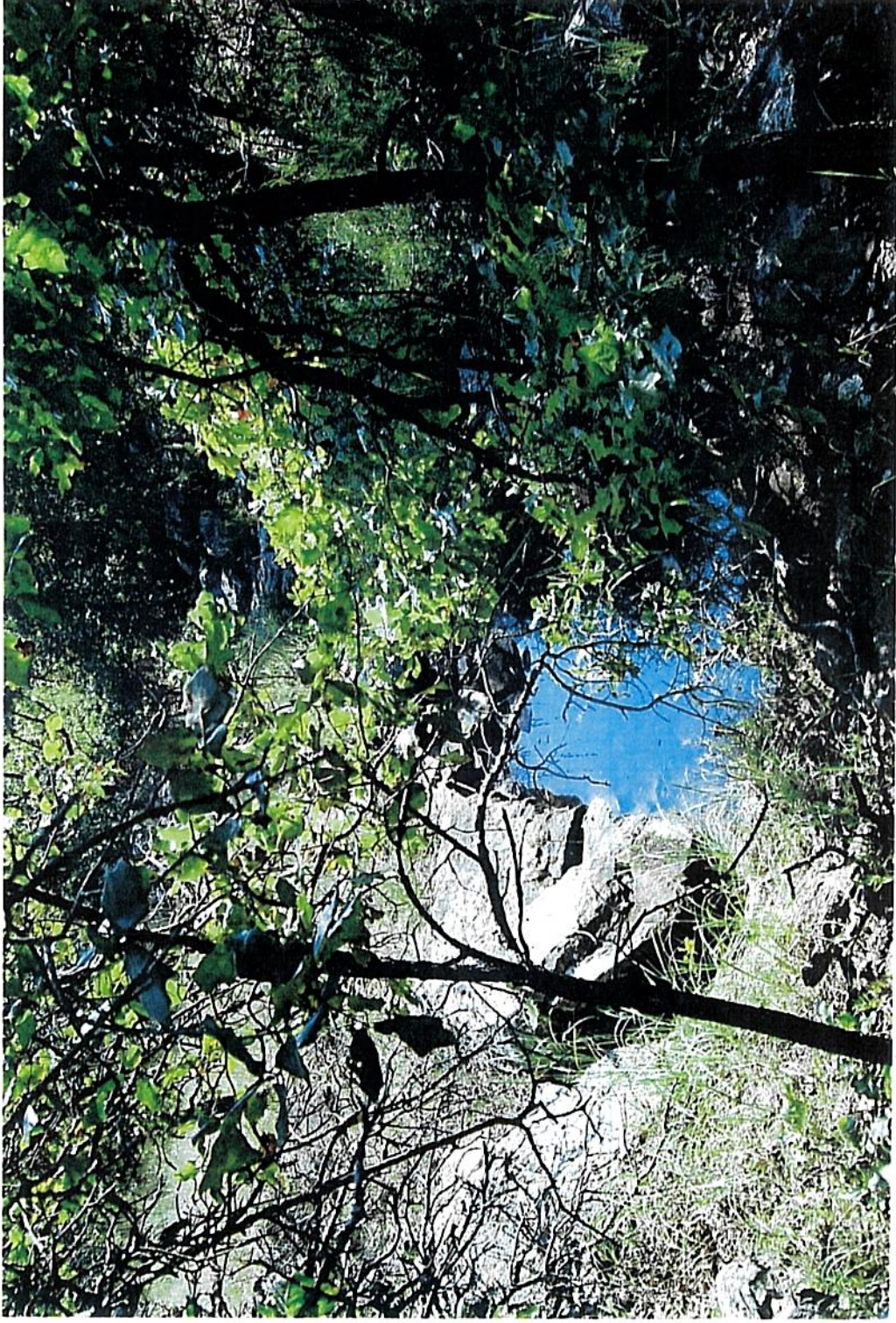


Photo 10 taken south. This is creek farther south. TSS here is 2500 ppm.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

NOV 16 2007

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7005 1820 0003 7458 5223

Mr. Patrick Adams, President
Altec Testing and Engineering, Inc.
6035 Fremont Street
Riverside, CA 92504-1114

Re: Cease and Desist Administrative Order
Docket Number CWA-06-2008-1737
Facility Number OKU000636

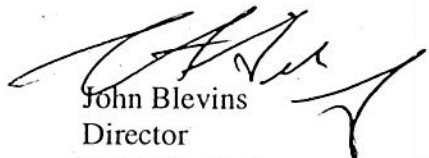
Dear Mr. Adams:

Enclosed is an Administrative Order (AO) issued to Altec Testing and Engineering, Inc. for violation of the Clean Water Act (33 U.S.C. § 1251 et seq.). The violation was identified based on our September 21, 2007, inspection of your facility located in the Northwest Quarter Section 36, Township 28 North, Range 9 East, Osage County, Oklahoma, designated as Facility Number OKU000636. The inspection results were discussed with you on October 3, 2007. The violation found consists of an unauthorized discharge of a pollutant, specifically oil field brine, to waters of the United States.

Effective upon receipt of this AO, you shall immediately cease and desist all discharges of pollutants into the identified tributary of Rock Creek, and comply with the provisions of this AO. The Environmental Protection Agency is committed to ensuring compliance with the requirements of the Clean Water Act, and my staff will assist you in any way possible.

If you have any questions, please contact Mr. Matt Rudolph, of my staff, at (214) 665-6434.

Sincerely yours,


John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure(s)

GOVERNMENT
EXHIBIT

16

cc: Ms. Diane Daniels, Environmental Director
Osage Nation Environmental
and Natural Resources Department
P.O. Box 1495
Pawhuska, OK 74056

Altec Petroleum Group Inc.
323 CR 3460
Pawhuska, OK 74056

U. S. ENVIRONMENTAL PROTECTION AGENCY-REGION 6
FINDINGS OF VIOLATION AND COMPLIANCE ORDER
In the Matter of Altec Testing and Engineering, Inc., Respondent
Docket No. CWA-06-2008-1737

STATUTORY AUTHORITY

The following findings are made and Order issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA), by Section 309(a) of the Clean Water Act (Act), 33 U.S.C. 1319(a). The Administrator has delegated the authority to issue this Order to the Regional Administrator of EPA Region 6 who has further delegated such authority to the Director of the Compliance Assurance and Enforcement Division.

FINDINGS

1. Respondent, Altec Testing and Engineering, Inc., is a "person" as defined by Section 502(5) of the Act, 33 U.S.C. 1362(5).
2. At all times relevant to the violation alleged herein (relevant time period) Respondent operated an oil field facility located in the Northwest Quarter Section 36, Township 28 North, Range 9 East, Osage County, Oklahoma (facility), designated as Facility Number OKU000636.
3. On September 21, 2007, an EPA inspector observed at the facility, namely, oil field brine generated by oil production activities, had been recently discharged from leaking storage pits within the facility to "waters of the United States" as that term is defined by 40 C.F.R. § 122.2. Pollutants were discharged to a tributary of Rock Creek, located approximately 475 feet down gradient and southwest from the facility. The inspector determined that the water located at the discharge point of entry into the tributary of Rock Creek was contaminated from brine discharges and measured 30,000 parts-per-million total soluble salts.
4. The storage pits referred to in paragraph 3 above are "point sources" as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).
5. At no time during the relevant time period did Respondent have National Pollutant Discharge Elimination System (NPDES) program coverage under the Act which authorized the discharge of a pollutant from the facility to waters of the United States.
6. During the relevant time period, it was unlawful under Section 301(a) of the Act, 33 U.S.C. § 1319(a), for any person to discharge a pollutant from a point source to waters of the United States without a permit issued under Section 402 of the Act, 33 U.S.C. § 1342.

7. On or about September 21, 2007, Respondent discharged and caused the discharge of pollutants from point sources within the facility to waters of the United States without permit coverage under the Act in violation of Section 301(a) of the Act, 33 U.S.C. § 1319(a).

ORDER

Based on these findings and pursuant to the authority of Section 309(a) of the Act, 33 U.S.C. § 1319(a), EPA orders that Respondent take the following actions upon receipt of this Order:

1. cease all discharges of pollutants from the facility;
2. remove all brine from the tributary of Rock Creek, located at Latitude 36° 51.94' North and Longitude 96° 17.58' West, which was discharged from the facility on or about September 21, 2007;
3. install a catchment structure that will catch and prevent the discharges of contaminated fluids from the facility to the tributary of Rock Creek;
4. neutralize or extract all the brine contaminated soil located in the drainage between the facility and the discharge point of entry;
5. within thirty (30) days of the effective date of this Order, Respondent shall provide written certification to the EPA Region 6, that these activities have been completed.

GENERAL PROVISIONS

Issuance of this Order shall not be deemed an election by EPA to waive any administrative, judicial, civil or criminal action to seek penalties, fines or other relief under the Act for the violation alleged herein or other violations which may become known to EPA. EPA reserves the right to seek any remedy available under the law which it deems appropriate.

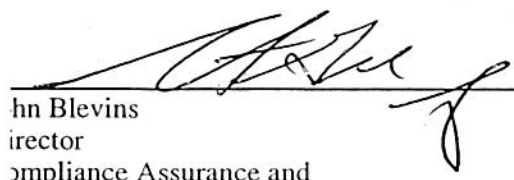
Failure to comply with this Order or the Act may result in the initiation of an administrative penalty action by EPA or a civil judicial penalty action by the U.S. Department of Justice.

Compliance with this Order does not relieve Respondent of its obligation to comply with all applicable federal, state and local laws.

The effective date of this Order is the date it is
ce: by the Respondent.

NOV 1 3 2007

ate



John Blevins
Director
Compliance Assurance and
Enforcement Division

NOV 16 2007

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7005 1820 0003 7458 5223

Mr. Patrick Adams, President
Altec Testing and Engineering, Inc.
6035 Fremont Street
Riverside, CA 92504-1114

Re: Cease and Desist Administrative Order
Docket Number CWA-06-2008-1737
Facility Number OKU000636

Dear Mr. Adams:

Enclosed is an Administrative Order (AO) issue for violation of the Clean Water Act (33 U.S.C. § 1251 on our September 21, 2007, inspection of your facility 1 Township 28 North, Range 9 East, Osage County, Okla OKU000636. The inspection results were discussed with you and found consists of an unauthorized discharge of a pollutant into the United States.

Effective upon receipt of this AO, you shall immediately cease and desist all discharges of pollutants into the identified tributary of Rock Creek, and comply with the provisions of this AO. The Environmental Protection Agency is committed to ensuring compliance with the requirements of the Clean Water Act, and my staff will assist you in any way possible.

If you have any questions, please contact Mr. Matt Rudolph, of my staff, at (214) 665-6434.

Sincerely yours,

John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure(s)

cc: Ms. Diane Daniels, Environmental Director
Osage Nation Environmental
and Natural Resources Department
P.O. Box 1495
Pawhuska, OK 74056

Altec Petroleum Group Inc.
323 CR 3460
Pawhuska, OK 74056

CONCURRENCES: H:\6EN\6EN-W\WR\Rudolph\Altec\06_2008_1737\AltecAOcvlt.doc

5225 9547 0000 0297 5002

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11/16/07

Sent To: *Altec Testing and Engineering*
Street, Apt. No.,
or PO Box No. *6035 Fremont Street*
City, State, ZIP+4 *Riverside CA 92504*

PS Form 3800, June 2002 See Reverse for Instructions

6EN-WR	6EN-W	6EN-RC			
SAUNDERS	MICHAUD	McDonald			

bcc: Hill-Hill (6EN-WR)

SPR
10/23/07

U. S. ENVIRONMENTAL PROTECTION AGENCY-REGION 6
FINDINGS OF VIOLATION AND COMPLIANCE ORDER
In the Matter of Altec Testing and Engineering, Inc., Respondent
Docket No. CWA-06-2008-1737

STATUTORY AUTHORITY

The following findings are made and Order issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA), by Section 309(a) of the Clean Water Act (Act), 33 U.S.C. § 1319(a). The Administrator has delegated the authority to issue this Order to the Regional Administrator of EPA Region 6 who has further delegated such authority to the Director of the Compliance Assurance and Enforcement Division.

FINDINGS

1. Respondent, Altec Testing and Engineering, Inc., is a "person" as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

2. At all times relevant to the violation alleged herein (relevant time period) Respondent operated an oil field facility located in the Northwest Quarter Section 36, Township 28 North, Range 9 East, Osage County, Oklahoma (facility), designated as Facility Number OKU000636.

3. On September 21, 2007, an EPA inspector observed that pollutants, namely, oil field brine generated by oil production activities, had been recently discharged from leaking storage pits within the facility to "waters of the United States" as that term is defined by 40 C.F.R. § 122.2. Pollutants were discharged to a tributary of Rock Creek, located approximately 475 feet down gradient and southwest from the facility. The inspector determined that the water located at the discharge point of entry into the tributary of Rock Creek was contaminated from brine discharges and measured 30,000 parts-per-million total soluble salts.

4. The storage pits referred to in paragraph 3 above are "point sources" as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).

5. At no time during the relevant time period did Respondent have National Pollutant Discharge Elimination System (NPDES) program coverage under the Act which authorized the discharge of a pollutant from the facility to waters of the United States.

6. During the relevant time period, it was unlawful under Section 301(a) of the Act, 33 U.S.C. § 1319(a), for any person to discharge a pollutant from a point source to waters of the United States without a permit issued under Section 402 of the Act, 33 U.S.C. § 1342.

7. On or about September 21, 2007, Respondent discharged and caused the discharge of pollutants from point sources within the facility to waters of the United States without permit coverage under the Act in violation of Section 301(a) of the Act, 33 U.S.C. § 1319(a).

ORDER

Based on these findings and pursuant to the authority of Section 309(a) of the Act, 33 U.S.C. § 1319(a), EPA orders that Respondent take the following actions upon receipt of this Order:

1. cease all discharges of pollutants from the facility;
2. remove all brine from the tributary of Rock Creek, located at Latitude 36° 51.94' North and Longitude 96° 17.58' West, which was discharged from the facility on or about September 21, 2007;
3. install a catchment structure that will catch and prevent the discharges of contaminated fluids from the facility to the tributary of Rock Creek;
4. neutralize or extract all the brine contaminated soil located in the drainage between the facility and the discharge point of entry;
5. within thirty (30) days of the effective date of this Order, Respondent shall provide written certification to the EPA Region 6, that these activities have been completed.

GENERAL PROVISIONS

Issuance of this Order shall not be deemed an election by EPA to waive any administrative, judicial, civil or criminal action to seek penalties, fines or other relief under the Act for the violation alleged herein or other violations which may become known to EPA. EPA reserves the right to seek any remedy available under the law which it deems appropriate.

Failure to comply with this Order or the Act may result in the initiation of an administrative penalty action by EPA or a civil judicial penalty action by the U.S. Department of Justice.

Compliance with this Order does not relieve Respondent of its obligation to comply with all applicable federal, state and local laws.

Compliance with this Order does not relieve Respondent of its obligation to comply with all applicable federal, state and local laws.

The effective date of this Order is the date it is received by the Respondent.

Date

John Blevins
Director
Compliance Assurance and
Enforcement Division

7005 1820 0003 7458 5223

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11/16/07

Sent To Allec Testing and Engineering
 Street, Apt. No.,
 or PO Box No. 6035 Fremont Street
 City, State, ZIP+4 Riverside CA 92504

PS Form 3800, June 2002 See Reverse for Instructions

GOVERNMENT
EXHIBIT
17

FOLLOW-UP INSPECTION REPORT

INSPECTION DATE: 3/10/2008

INCIDENT NO: 09212007-2

INVESTIGATOR: Kent Sanborn

LOCATION: NW/4, Sec. 36, T 28, R 9

COUNTY: OSAGE

SPILL OR DISCHARGE DATE:

MATERIAL SPILLED: Brine

AMOUNT: UNKNOWN

REPORTED BY:

OWNER/OPERATOR: ALTEC PETROLEUM GROUP, INC.
323 CR 3460
PAWHUSKA, OK 74056
951-367-9055

SURFACE OWNER: STATE OF OKLAHOMA

PHONE: Unknown

EMERGENCY HOTLINE NOTIFIED:

POINT SOURCE: DRILLING PITS

LATITUDE/LONGITUDE: 36 51.970N, 96 17.492W

RECEIVING WATER: ROCK CREEK TRIBUTARY

LATITUDE/LONGITUDE: 36 51.939N, 96 17.582W

INSPECTION OBSERVATIONS:

ENTIRE LOCATION HAS BEEN GRADE AND WORKED WITH GYPSUM. NO NEW GRASS. NO DAM WAS EVER BUILT TO CONTAIN THE HIGHEST OF THE BRINE. NO WATER WAS EVER REMOVED FROM THE CREEKS FIRST HOLE. TSS AT THAT HOLE TODAY IS 3700-6700 PPM. CREEK DONWSTREAM IS 1200-2200 PPM TSS. WELL IS TA WITH TEST TANK NEARBY.

SUPPORTING VIDEO, PICTURES, OR SAMPLES: Photos

OTHER AGENCIES OR PARTIES CONTACTED OR INVOLVED:

BIA

GOVERNMENT
EXHIBIT

18

**ALTEC PETROLEUM GROUP, INC.
NW 36-28N-9E OSAGE COUNTY, OK
MARCH 10, 2008**



Photo 1 taken south. Area graded and treated with gypsum. Little if any grass growth. No cover to prevent erosion.

**ALTEC PETROLEUM GROUP, INC.
NW 36-28N-9E OSAGE COUNTY, OK
MARCH 10, 2008**



Photo 2 taken south. Another view of location. Well and test tank in the background.

**ALTEC PETROLEUM GROUP, INC.
NW 36-28N-9E OSAGE COUNTY, OK
MARCH 10, 2008**



Photo 3 taken south. Creek at entry point. No catch basin or dam was ever build here to catch runoff. No recent effort to removed runoff from creek. TSS ranges from 3700-6700 ppm.

**ALTEC PETROLEUM GROUP, INC.
NW 36-28N-9E OSAGE COUNTY, OK
MARCH 10, 2008**



Photo 4 taken southeast. Close-up of well and tank. No vegetation growth or ground cover.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

MAY 20 2008

Ms. Diane Daniels, Environmental Director
Osage Nation Environmental and
Natural Resources Department
P.O. Box 1495
Pawhuska, OK 74056

Re: Notice of Proposed Administrative Penalty Assessment
Docket Number CWA-06-2008-1832
Facility Number OKU000636

Dear Ms. Daniels:

Enclosed is a copy of the Administrative Complaint which the Environmental Protection Agency is issuing to Altec Petroleum Group, Inc., pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g). We are issuing the complaint to administratively assess a Class I civil penalty of \$19,500 against Altec Petroleum Group, Inc. for violations of the Clean Water Act. Because the violations have occurred in Osage County, Oklahoma, I am offering you an opportunity to confer with us regarding the proposed penalty assessment.

You may request a conference within two weeks of receipt of this letter. The conference may be in person or by telephone and may cover any matters relevant to the proposed penalty assessment. If you wish to request a conference or if you have any comments or questions regarding the matter, please contact Mr. Matt Rudolph, of my staff, at (214) 665-6434.

Sincerely,

A handwritten signature in black ink, appearing to read "John Blevins".

John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure

GOVERNMENT
EXHIBIT

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

MAY 20 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED (7005 1820 0003 7458 5452)

Mr. Patrick Adams, President
Altec Petroleum Group, Inc.
323 County Road 3460
Pawhuska, OK 74056

Re: Notice of Proposed Assessment of Class I Civil Penalty
Docket Number CWA-06-2008-1832
Facility Number OKU000636

Dear Mr. Adams:

Enclosed is an Administrative Complaint (Complaint) issued to Altec Petroleum Group, Inc. for violation of Section 301 of the Clean Water Act. Violations were identified based on inspections conducted by the Environmental Protection Agency (EPA) on September 21, 2007, and March 10, 2008. The violations are for unauthorized discharges of a pollutant, specifically oil field brine, to waters of the United States.

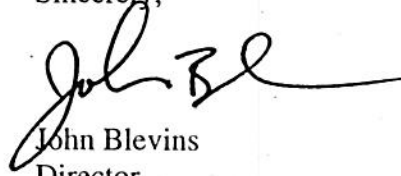
By law, you have the right to request a hearing regarding the violations alleged in the Complaint and the proposed administrative civil penalty. Please pay particular attention to Section V of the Complaint entitled "Notice of Opportunity to Request a Hearing." Note that should you fail to request a hearing within thirty (30) days of receipt of the Complaint, you will waive your right to such a hearing, and the proposed civil penalty of \$19,500 may be assessed against you without further proceedings. You have the right to be represented by an attorney or to represent yourself at any stage of these proceedings.

Whether or not you request a hearing, we invite you to confer informally with the EPA concerning the alleged violation and the amount of the proposed penalty. You may represent yourself or be represented by an attorney at any conference, whether in person or by telephone. The EPA encourages all parties against whom it files a Complaint proposing assessment of a penalty to pursue the possibility of settlement as a result of an informal conference.

GOVERNMENT
EXHIBIT
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The EPA is committed to ensuring compliance with the requirements of the National Pollutant Discharge Elimination System program, and my staff will assist you in any way possible. If you have any questions, or wish to discuss the possibility of a settlement of this matter, please contact Mr. Matt Rudolph, of my staff, at (214) 665-6434.

Sincerely,



John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure(s)

cc: w/complaint - Regional Hearing Clerk

Ms. Diane Daniels, Environmental Director
Osage Nation Environmental and
Natural Resources Department
P.O. Box 1495
Pawhuska, OK 74056

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

FILED
08 MAY 20 AM 3:10
REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of

Altec Petroleum Group, Inc.
an Oklahoma Corporation

Respondent

Facility No. OKU000636

§ Docket No. CWA-06-2008-1832
§
§
§ Proceeding to Assess a Class I
§ Civil Penalty under Section 309(g)
§ of the Clean Water Act
§
§ ADMINISTRATIVE COMPLAINT
§

I. Statutory Authority

This Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act ("the Act"), 33 U.S.C. § 1319(g). The Administrator of EPA has delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who has further delegated this authority to the Director of the Compliance Assurance and Enforcement Division of EPA Region 6 ("Complainant"). This Class I Administrative Complaint is issued in accordance with, and this action will be conducted under, "the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," including rules related to Administrative Proceedings not Governed by Section 554 of the Administrative Procedures Act, 40 C.F.R. §§ 22.50 - 22.52.

Based on the following Findings, Complainant finds that the Respondent has violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

II. Findings of Fact and Conclusions of Law

1. Altec Petroleum Group, Inc. ("Respondent") is a Corporation which was incorporated under the laws of the State of Oklahoma, and as such, Respondent is a "person," as that term is defined at Section 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. At all times relevant to the violations alleged herein, Respondent owned or operated an oil field production facility located in the Northwest Quarter of Section 36, Township 28 North, Range 9 East, Osage County, Oklahoma ("the facility"), and was therefore an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

3. At all relevant times, the facility was a "point source" of a "discharge" of "pollutants," (i.e., oil field brine), to receiving waters of a tributary of Rock Creek, which is a water of the United States within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

4. Because the Respondent owned or operated a facility which acted as a point source of a discharge of pollutants to waters of the U.S., the Respondent and the facility are subject to the Act and the National Pollutant Discharge Elimination System (NPDES) program.

5. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. According to the NPDES program, the discharge of oil field brine to "waters of the U.S." is a non-permitted discharge.

6. On September 21, 2007, the facility was inspected by an EPA inspector. The inspector observed that oil field brine had been discharged from the production area at the facility, located at

Latitude 36° 51.70' North and Longitude 96° 17.49' West, to a tributary of Rock Creek, located at Latitude 36° 51.94' North and Longitude 96° 17.58' West. The inspector determined that the water at the discharge point of entry into the tributary was contaminated from brine discharges and measured 30,000 parts-per-million (ppm) total soluble salts (TSS). The inspector noted the facility previously had two drilling pits which had been backfilled. The inspector observed an area adjacent to the point of entry to be saturated.

7. On March 10, 2008, the facility was inspected by an EPA inspector. The inspector determined that water located inside the tributary measured 3,700 to 6,700 ppm TSS. The inspector noted that there was no catchment structure to prevent contaminated runoff from the facility from entering the tributary.

8. Each day of unauthorized discharge was a violation of Section 301 of the Act, 33 U.S.C. § 1311.

9. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), the Respondent is liable for a civil penalty in an amount not to exceed \$11,000 per day for each day during which a violation occurs or continues, up to a maximum of \$32,500.

10. EPA has notified the Osage Nation Environmental and Natural Resources Department of the issuance of this Complaint and has afforded the tribe an opportunity to consult with EPA regarding the assessment of an administrative penalty against the Respondent as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

11. EPA has notified the public of the filing of this Complaint and has afforded the public thirty (30) days in which to comment on the Complaint and on the proposed penalty as required by

Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A). At the expiration of the notice period, EPA will consider any comments filed by the public.

III. Proposed Penalty

12. Based on the foregoing Findings, and pursuant to the authority of Sections 309(g)(1) and (g)(2)(A) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(A), EPA Region 6 hereby proposes to assess against the Respondent a civil penalty of nineteen thousand five hundred dollars (\$19,500).

13. The proposed penalty amount has been determined based on the statutory factors specified in Section 309(g)(3), 33 U.S.C. § 1319(g)(3), which includes such factors as the nature, circumstances, extent and gravity of the violation(s), economic benefits, if any, prior history of such violations, if any, degree of culpability, and such matters as justice may require. Complainant has specified that the administrative procedures specified in 40 C.F.R. Part 22, Subpart I shall apply to this matter, and the administrative proceedings shall not be governed by Section 554 of the Administrative Practice Act.

IV. Failure to File an Answer

14. If the Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, the Respondent must file an Answer to this Complaint within thirty (30) days after service, whether or not the Respondent requests a hearing as discussed below.

15. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15 (copy enclosed). Failure to file an Answer to this Complaint within thirty (30) days of service, shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to

Latitude 36° 51.70' North and Longitude 96° 17.49' West, to a tributary of Rock Creek, located at Latitude 36° 51.94' North and Longitude 96° 17.58' West. The inspector determined that the water at the discharge point of entry into the tributary was contaminated from brine discharges and measured 30,000 parts-per-million (ppm) total soluble salts (TSS). The inspector noted the facility previously had two drilling pits which had been backfilled. The inspector observed an area adjacent to the point of entry to be saturated.

7. On March 10, 2008, the facility was inspected by an EPA inspector. The inspector determined that water located inside the tributary measured 3,700 to 6,700 ppm TSS. The inspector noted that there was no catchment structure to prevent contaminated runoff from the facility from entering the tributary.

8. Each day of unauthorized discharge was a violation of Section 301 of the Act, 33 U.S.C. § 1311.

9. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), the Respondent is liable for a civil penalty in an amount not to exceed \$11,000 per day for each day during which a violation occurs or continues, up to a maximum of \$32,500.

10. EPA has notified the Osage Nation Environmental and Natural Resources Department, of the issuance of this Complaint and has afforded the tribe an opportunity to consult with EPA regarding the assessment of an administrative penalty against the Respondent as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

11. EPA has notified the public of the filing of this Complaint and has afforded the public thirty (30) days in which to comment on the Complaint and on the proposed penalty as required by

Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A). At the expiration of the notice period, EPA will consider any comments filed by the public.

III. Proposed Penalty

12. Based on the foregoing Findings, and pursuant to the authority of Sections 309(g)(1) and (g)(2)(A) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(A), EPA Region 6 hereby proposes to assess against the Respondent a civil penalty of nineteen thousand five hundred dollars (\$19,500).

13. The proposed penalty amount has been determined based on the statutory factors specified in Section 309(g)(3), 33 U.S.C. § 1319(g)(3), which includes such factors as the nature, circumstances, extent and gravity of the violation(s), economic benefits, if any, prior history of such violations, if any, degree of culpability, and such matters as justice may require. Complainant has specified that the administrative procedures specified in 40 C.F.R. Part 22, Subpart I shall apply to this matter, and the administrative proceedings shall not be governed by Section 554 of the Administrative Practice Act.

IV. Failure to File an Answer

14. If the Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, the Respondent must file an Answer to this Complaint within thirty (30) days after service, whether or not the Respondent requests a hearing as discussed below.

15. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15 (copy enclosed). Failure to file an Answer to this Complaint within thirty (30) days of service, shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to

hearing. Failure to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion under 40 C.F.R.

§ 22.15(d).

16. If the Respondent does not file an Answer to this Complaint within thirty (30) days after service, a Default Order may be issued against the Respondent pursuant to 40 C.F.R. § 22.17. A Default Order, if issued, would constitute a finding of liability, and could make the full amount of the penalty proposed in this Complaint due and payable by the Respondent without further proceedings sixty (60) days after a Final Default Order is issued.

17. The Respondent must send its Answer to this Complaint, including any request for hearing, and all other pleadings to:

Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

18. The Respondent shall also send a copy of its Answer to this Complaint to the following EPA attorney assigned to this case:

Ms. Lorraine Dixon (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

19. The Answer must be signed by the Respondent, the Respondent's counsel, or other representative on behalf of the Respondent and must contain all information required by 40 C.F.R. §§ 22.05 and 22.15, including the name, address, and telephone number of the Respondent and the Respondent's counsel. All other pleadings must be similarly signed and filed.

V. Notice of Opportunity to Request a Hearing

20. The Respondent may request a hearing to contest any material allegation contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g). The procedures for hearings are set out at 40 C.F.R. Part 22, including 40 C.F.R. §§ 22.50 through 22.52.

21. Any request for hearing should be included in the Respondent's Answer to this Complaint; however, as discussed above, the Respondent must file an Answer meeting the requirements of 40 C.F.R. § 22.15 in order to preserve the right to a hearing or to pursue other relief.

22. Should a hearing be requested, members of the public who commented on the issuance of the Complaint during the public comment period will have a right to be heard and to present evidence at such hearing under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B).

VI. Settlement

23. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, the Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. The Respondent may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Mr. Matt Rudolph, of my staff, at (214) 665-6434.

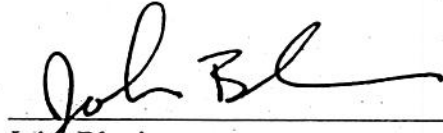
24. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a

Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive the Respondent's right to a hearing on any matter stipulated therein or alleged in the Complaint. Any person who commented on this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such CAFO and to hold a hearing on the issues raised in the Complaint. Such a petition would be granted and a hearing held only if the evidence presented by the petitioner's comment was material and was not considered by EPA in the issuance of the CAFO.

25. Neither assessment nor payment of a penalty in resolution of this action will affect the Respondent's continuing obligation to comply with all requirements of the Act, the applicable regulations and permits, and any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), including one relating to the violations alleged herein.

5/16/08

Date



John Blevins
Director
Compliance Assurance and
Enforcement Division

CERTIFICATE OF SERVICE

I certify that the foregoing Class I Administrative Complaint was sent to the following persons, in the manner specified, on the date below:

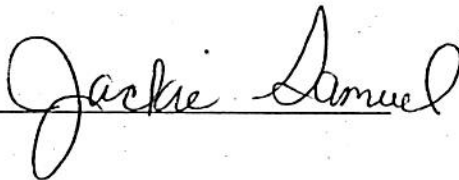
Original hand-delivered: Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Copy by certified mail,
return receipt requested: Mr. Patrick Adams, President
Altec Petroleum Group, Inc.
323 County Road 3460
Pawhuska, OK 74056

Copy by mail: Ms. Diane Daniels, Environmental Director
Osage Nation Environmental
and Natural Resources Department
P.O. Box 1495
Pawhuska, OK 74056

Hand-delivered: Ms. Lorraine Dixon (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Dated: MAY 20 2008



7005 1820 0003 7458 5452

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Sent To Altec Petroleum Group Inc
 Street, Apt. No.,
 or PO Box No. 323 County Road 346A
 City, State, ZIP+4 Pawhuska OK 74056

M. Rudolph

Michael



Testing & Engineering, Inc.

June 16, 2008

Mr. John Blevins, Director
Compliance Assurance and Enforcement Division
United States Environmental Protection Agency
Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

RECEIVED
JUN 23 2008
6EN-W

Re: Notice of Proposed Assessment of Class I Civil Penalty
Docket Number CWA-06-2008-1832
Facility Number OKU000636

Dear Mr. Blevins,

I am in receipt of your May 20, 2008 letter and would like to request a hearing in order to present our side of the complaint. I'm not sure what options that we have other than a formal hearing, however, for the record, I have spoken to Mr. Matt Rudolph on at least two other occasions and he was not very receptive to hearing another side of the story. On a second note, please update your files to reflect Altec's corporate office located at:

Altec Petroleum Group, Inc.
c/o Altec Testing & Engineering, Inc.
6035 Fremont Street
Riverside, CA 92504
Ph (951) 352-6510
Fx (951) 352-6514

The address in Oklahoma is a field office and although it is a manned field office, papers of this time sensitive nature should come directly to my attention at our corporate office.

Thank you for your immediate attention in this matter and I look forward to discussing the case further.

Sincerely,

Patrick S. Adams
President



MATTHEW RUDOLPH

Home Contact Information:

1108 Peavy Road
Dallas, TX 75218
Phone: 214/404-4663

Work Contact Information:

US EPA Region 6 (6EN-WR)
1445 Ross Ave., Suite 1200
Dallas, TX 75202
Work: 214/665-6434
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EDUCATION

Southwest Texas State University, San Marcos, TX
M.S. Computer Science, 05/03

Texas Tech University, Lubbock, TX
B.S. Petroleum Engineering, 12/97

WORK HISTORY

US Environmental Protection Agency Region 6, Dallas, TX – 05/03 – present

Title: Environmental Engineer

Primary job duties in the Region 6 Water Enforcement Branch are as an enforcement officer and inspector for the oil and gas industry. As an enforcement officer develop and act as the lead technical contact for enforcement actions issued for violations of the Clean Water Act (CWA) and the National Pollutant Discharge Elimination System program. Enforcement actions are in the form of Administrative Orders (AOs); Administrative Complaints (penalties); and DOJ referrals. For the development of penalty actions I follow to the CWA Settlement Penalty Policy and to the Supplemental Environmental Project (SEP) policy. Develop SEPs in the form of environmental restoration and protection for oil and gas operators to perform site restoration work and environmental improvements to their facilities.

As an inspector perform inspections at onshore oil and gas facilities and act as the expert witness for violations of the CWA observed or cited during inspections.

Motorola, Austin, TX - 11/99-07/00

Title: Semiconductor Manufacturing Operator

Responsible for the manufacturing and the production of semiconductor wafers. Job duties include: processing wafers on specific recipes; recipe verification; and performing qualifications on manufacturing tools in order to verify the tools are in statistical control with Motorola standards.

Halliburton, Hobbs, NM, and Odessa, TX - 1/98-7/99

Title: Wellsite Engineer

Assisted in the design and the supervision of pumping operations for oil and gas well hydraulic fracturing operations; oil and gas well acidizing operations; and primary and secondary oil and gas well cementing operations. Job duties include: data acquisition; setting up the job site; onsite QA/QC of frac fluids and proppents; and assisting the lab with the pre-testing of fluids for both fracturing and cementing operations.

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RECORD OF COMMUNICATION	<input checked="" type="checkbox"/> PHONE CALL <input type="checkbox"/> DISCUSSION <input type="checkbox"/> FIELD TRIP <input type="checkbox"/> CONFERENCE <input type="checkbox"/> OTHER	
	TO: Matt Rudolph	FROM: Patrick Adams 951-367-9055
Subject: Returned my phone call		

Summary: Informed Mr. Adams that the EPA performed a re-inspection at the location on 3/10/08. Informed him it didn't appear he was in compliance with the AO which was issued to Altec in November. Informed him that non-compliances with the CWA, the EPA could pursue penalties as much as \$11,000 per day per violation. Informed him there would be a penalty issued against Altec right around \$30,000. Mr. Adams informed me he didn't agree with the EPA and the inspection findings from the original inspection conducted on 9/21/07. He felt he complied with what the EPA was requiring him to do. He informed me the original well was drilled with air and there was no salts present on the site, and the reason why there is so much salt on the site was because he flushed the location and the creek adjacent to the location with water which he pulled from a nearby creek which he thought was fresh but that water was also contaminated from brine. He informed me he was wanting to fight this penalty and was wanting to request a hearing.

Conclusions/Actions Taken or Required:



Penalty Calculation for Altec Petroleum

Under Section 309(g)(3) of the Clean Water Act (CWA) there are several factors specified for determining the amount of the penalty. These factors take into account the nature, circumstances, extent and gravity of the violation, or 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 violation, and such other matters as justice may require.

The following document will determine the following for this case: the maximum penalty and days of violation; the eight different components under CWA section 309(g)(3); and the penalty which should be assessed at a hearing.

Statutory Maximum Penalty and Days of Violation

Under Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(2)(A), the Respondent is liable for a civil penalty in an amount not to exceed \$11,000 per day during which a violation continues, up to a maximum of \$32,500.

Based on EPA's inspections; information submitted from the Oklahoma Department for Wildlife Conservation; and information submitted from the Respondent there was at a minimum two days of violation.

A drilling reserve pit located at the facility seeped pollutants to a tributary of Rock Creek on or before the EPA's inspection conducted on September 21, 2007. The Oklahoma Department for Wildlife Conservation first documented this seeping pit with photos on or about August 29, 2007. The Respondent submitted documents (Invoice 3005) stating they had spent \$685 cleaning up a spill on September 6, 2007.

It appears the pit was back filled in on or about September 20, 2007, from evidence provided by the Oklahoma Department for Wildlife Conservation and the Respondent.

The same reserve pit was closed out improperly and continued to seep pollutants after September 21, 2007, to the tributary of Rock Creek. This is evident from the EPA's inspection conducted on March 10, 2008; samples taken by the Oklahoma Department for Wildlife Conservation; and documentation submitted by the Respondent (Invoice 3010). Invoice 3010 respondent stated "Sucked out hole" on both October 8, 2007 and October 15, 2007. This hole being referenced is located in the creek and the Respondent knowingly was discharging fluids into it. Each day the pit seeped or discharged pollutants to the tributary of Rock Creek was a violation of the CWA.

Days of violation – At least two

Statutory Maximum Penalty - \$22,000

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CWA Section 309(g)(3) Factors

Nature of the violation - unauthorized and unpermitted discharge of oil field brine (brine) in violation of Section 301 of the CWA. The term "oil field brine" is being used to describe fluids associated with oil and gas activities which are high in salts. Brine includes but is not limited to the following: drilling fluids; drilling returns; produced fluids; cementing fluids; hydraulic stimulation fluids; and etc. Brine is a prohibited pollutant and is extremely toxic to a fresh water ecosystem. No permit was issued for this brine discharge. One of the proper ways of disposing of brine is with a permitted Class II injection well.

Circumstances – The "Altec Petroleum" drilled an oil/gas well in a wildlife conservation area, and next to a relatively permanent creek. A seeping reserve pit at the facility located approximately 470 feet up-gradient of the creek acted as a "point source" "discharge" of "pollutants" to "waters of the US."

Extent and gravity of violation – This factor quantifies the gravity of the violation. The gravity of violation factor is broken down into four different components:

Significance of violation - This factor is based on the degree of exceedance of the most significant effluent limit violation in each month.

Health and environmental harm - A value for this factor is selected for each month in which one or more violations present actual or potential harm to human health or to the environment. Fluids located in the reserve pit which were discharged to the creek were extremely high in chlorides, salts, cementing material, drilling returns, and other contaminants.

Number of effluent violations - This factor is based on the total number of effluent limit violations each month.

Number of non-effluent limit violations - There are six types of non-effluent violations: 1) monitoring and reporting; 2) pretreatment program implementation; 3) sludge handling; 4) unauthorized discharges; 5) permit milestone schedules; and 6) other types of non-effluent violations. For this case the non-effluent violations are: monitoring and reporting; and unauthorized discharges.

Ability to pay – The Respondent has not submitted any documentation in regards to this component. It is believed the Respondent can pay the penalty.

Prior history of such violations – EPA has no knowledge of the Respondent having any prior history of similar violations.

Degree of culpability – The Respondent knowingly had a seeping pit, which was discharging harmful pollutants to a creek. The Respondent neglected and made very poor

efforts to correct this problem and neglected to correct any harm this problem had caused to the environment. The Respondent knowingly drilled this well in an environmentally sensitive area. This area is a wildlife conservation area and the reserve pit was constructed close to a relatively permanent creek. The Respondent's parent company is an environmental consulting company and therefore should have known better.

The Respondent made a poor attempt to line the pit to stop the seep. The Respondent also made poor attempts in closing out the pit, which continued to seep pollutants after it was back filled in.

Economic benefit or savings – avoided or delayed costs for being noncompliant. This cost was calculated to be \$740 (BEN model).

Other matters as justice may require – none at this time.

Penalty – \$19,500 as proposed in the Complaint.

Case Name: Altec Petroleum Group Inc.

Prepared by Matt Rudolph and Lorraine Dixon [attorney name].

SETTLEMENT PENALTY CALCULATION WORKSHEET

STEP	AMOUNT
Calculate Statutory Maximum Penalty.	\$22,000
1. Nature of the violation	\$0
2. Circumstances	\$0
3. Economic Benefit calculations ¹	\$740
4. Gravity Amounts ² a. Significance of violation (Monthly Range 0 to 20) b. Health and environmental harm (Monthly Range 0 to 50) c. Number of effluent limit violations (Monthly Range 0 to 5) d. Number of non-effluent limit violations (Monthly Range 0 to 70)	\$16,000
5. Ability to pay	\$0
6. Prior history of such violations	\$0
7. Degree of culpability	\$2,760
8. Other matters as justice may require	\$0
TOTAL	\$19,500

¹ See attached BEN calculation

² See Interim Clean Water Act Settlement Penalty Policy for gravity calculation and tables referenced to determine the Monthly Range amounts for each component.

Facility Name: Altec Petroleum Group Inc.
 Docket Number: CWA-06-2008-1832 Date: March 13, 2008
 Facility No: OKU000636 Policy: 1995 CWA Settlement Policy
 Prepared By: Matt Rudolph Version 10.7

Monthly Gravity Component Calculation Worksheet

Discharge Date	Discharge Volume (bbls)	Documented Fish Kill		Additive Factors				Total Gravity 1+(A+B+C+D) X \$1000	
		Yes	No	A	B	C	D		
21-Sep-07	Unknown		X		3		4.0	8,000	
10-Mar-08	Unknown		X		3		4.0	8,000	
Total =		0						Total =	\$16,000

Case Name: Altec Petroleum Group Inc. Date: March 13, 2008
 Prepared by: Matt Rudolph Attorney: Lorraine Dixon
 Docket Number: CWA-06-2008-1832 Permit: OKU000636

Clean Water Act NPDES Penalty Settlement Calculation Worksheet

Calculate Statutory Maximum Penalty				Version 10.7	
From:					
To:				Admin.	Judicial
Unpermitted violations prior 2/97		0	0	0	
Permitted violations prior 2/97		0	0	0	
Unpermitted violations 2/1/97 to 3/15/2004		0	0	0	
Permitted violations 2/1/97 to 3/15/2004		0	0	0	
Unpermitted violations after 3/15/2004		2	22,000	65,000	Admin.: \$22,000
Permitted violations after 3/15/2004		0	0	0	Judicial: \$65,000
Economic Benefit (attach BEN printouts, with explanations for calculations)					\$740
Total of Monthly Gravity Amounts					\$16,000
Economic Benefit + Gravity Amounts					\$16,740
Gravity Adjustments					
Flow Reduction (0-50%)			0%	\$0	
Recalcitrance Factor (0-150%)			17%	\$2,720	
Quick Settlement Reduction (0-10%)			0%	\$0	
Total gravity adjustments				\$2,720	\$2,720
Preliminary Penalty Amount					\$19,460
Litigation Consideration (if any) Regional Counsel Concurrence:					\$0
Ability to Pay reduction (if any) Attach ABEL, INDIPAY or MUNIPAY report					\$0
Bottom Line without Economic Benefit					\$18,720
Bottom-line Cash Settlement Penalty					\$19,460
National Municipal Litigation (NML) Alternative Penalty Calculation					
Is Respondent a Municipality		No			0
Service Population					#REF!
Actual or Potential Harm					
Months of Violation					
Economic Benefit		\$740			
see Section IV.D.7. of the Settlement Policy					
Bottom Line with NML					
Supplemental Environmental Projects (see above section for NML SEP calculations)					
Bottom-line with Max. SEP Credit					\$4,680

Max. SEP Credit (except for NML calculations)	\$14,780
Max. SEP Value (dividing Max. SEP Credit by Credit Percentage)	\$18,475
Proposed SEP Value	\$18,475
Credit Percentage for SEP (usually 20-80%)	80%
Credit Value for SEP (Credit Percentage X Proposed SEP Value)	\$14,780
Proposed SEP plus Bottom-line Cash Settlement (effective cost of penalty to Respondent)	\$23,155
Bottom-line Cash Settlement with Proposed SEP	\$4,680

The above calculations made based on guidance in EPA's 1995 CWA Settlement Policy

Last updated February 23, 2005

As of March 15, 2004, violations for Class I have a maximum of \$32,500 and Class II a maximum of \$157,500

From Feb. 1997 through March 14, 2004, the maximums were \$27,500 and \$137,500, respectively.

Facility Name: Altec Petroleum Group Inc.
Docket Number: CWA-06-2008-1832
NPDES Permit No: OKU000636
Prepared By: Matt Rudolph

Penalty Calculation Rationale

Version 10.7

This penalty calculation was determined using the 1995 Clean Water Act Settlement Policy (available at <http://www.epa.gov/region6/6en/w/formenf.htm>). The penalty calculation methodology is based upon the following formula: Penalty = Economic Benefit + Gravity ± Gravity Adjustment Factors - Litigation Considerations - Ability to Pay Supplemental Environmental Projects.

Economic Benefit: \$740

The objective of the economic benefit calculation is to place violators in the same financial position as they would have been in if they had complied on time. The delayed/avoided CWA pollution controls for this case are (e.g., monitoring, reporting, capital equipment improvements, repairs, engineering design, installation and replacement). The economic model used to determine the value of benefit gained is the BEN financial model, which is available online at www.epa.gov/Compliance/civil/programs/econmodels/. Financial summaries of the BEN model are attached to the penalty calculation in this package.

Gravity: \$16,000

The gravity is the deterrence portion of the penalty and is derived by the following formula: Monthly gravity component = (1+A+B+C+D) X \$1000, where A is the Significance of the violation (range of 0-20), B is the Health and Environmental Harm (value of 0-50), C is the Number of Effluent Violations (range of 0-5), and D is the significance of non-effluent limit violations (range of 0-70). Using the associated tables in the policy for each factor and best professional judgment, numbers were assigned for each factor and each month as documented in the Monthly Gravity Component Worksheet.

Gravity Adjustment Factors: \$2,720

Respondent showed severe recalcitrance: by not responding to an AO issued; not wanting to work with the EPA or the Oklahoma Attorney General on this matter.

Page 2 - Penalty Calculation Rationale

Litigation Considerations & Inability to Pay	\$0	
<p>The government may reduce the amount of a civil penalty to reflect weaknesses in a case where the facts demonstrate a substantial likelihood that the government will not achieve a higher penalty at trial. This amount is determined by Regional Counsel based on their legal review of the case and their experience in settling similar cases. No litigation consideration amount has been deemed appropriate by Regional Counsel for this case. Additionally, Respondent has not yet claimed an inability to pay. If Respondent makes such a claim, EPA will evaluate the inability to pay according to ABEL and MUNIPAY economic models, and reduce the penalty accordingly.</p>		
National Municipal Litigation:	#REF!	
<p>In those cases against a municipality or other public entity, in which the entity has failed to comply with the CWA, but nevertheless did make good faith efforts to comply, the EPA may mitigate the preliminary penalty amount with this penalty calculation formula using table A of this policy. This facility is not a municipality and does not qualify.</p>		
Supplemental Environmental Projects	\$18,475	80%

Based on the above rationale and information documented in the Monthly Gravity Component Calculation Worksheet and the Settlement Calculation Worksheet, the final bottom line penalty is:

\$4,680

ENFORCEMENT MANAGEMENT/SETTLEMENT STRATEGY DOCUMENT

I. EPA Region 6 Initial Position for Settlement:

A.. 1. Topic: 2. Case Synopsis: 3. Proposed Penalty: 4. SEP/NO SEP (ideas): No SEP at this time.

INITIAL SETTLEMENT STRATEGY TABLE

<i>Bottomline Cash Penalty with SEP</i>	<i>Bottom Line Cash Penalty w/o SEP (BEN plus Gravi Comment)</i>	
\$4,680	\$19,460	

Initial Settlement Strategy: Approved by _____ (initial & date by Branch Chief or Director)

Approved by _____ (initial & date by Section Chief)

B.

SETTLEMENT CONCLUSION TABLE

<i>Bottomline Cash Penalty with SEP</i>	<i>Initial Cash Penalty w/o SEP</i>	<i>Adjusted Amount</i>	<i>Final Cash Penalty</i>	<i>Short Rationale</i>
\$4,680	\$19,460	\$14,780	\$4,680	Collect 25% of the calculated gravity component, if a SEP is performed.
Comment: <div style="border: 1px solid black; height: 40px; width: 100%;"></div>				

Case Conclusion:

Initials	Date of Initials	Name Printed	Title
		Matt Rudolph	Enforcement Officer
		Lorraine Dixon	Attorney

*NOTE: Civil Penalty less than \$500,000 or equal to will be approved by the Branch Chief.

Anything over \$500,00 will be approved by the Division Director

- I. Penalty reduction/increase - Section Chief (20 - 35% below bottom line)
- II. Penalty reduction/increase - Branch Chief (35-50% bbl & approves inability to pay below 10%)
- III. Penalty reduction/increase - Division Director (more than 50% bbl)

Version 10.7

ENFORCEMENT SENSITIVE* *INTERNAL* *ANALYTICAL* * DELIBERATIVE

Run Name = OsageLease	
Present Values as of Noncompliance Date (NCD),	21-Sep-2007
A) On-Time Capital & One-Time Costs	\$12,180
B) Delay Capital & One-Time Costs	\$11,788
C) Avoided Annually Recurring Costs	\$287
D) Initial Economic Benefit (A-B+C)	\$679
E) Final Econ. Ben. at Penalty Payment Date,	
01-Sep-2008	\$740
<i>C-Corporation w/ OK tax rates</i>	
Discount/Compound Rate	9.6%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	13-Mar-2008
Capital Investment:	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
One-Time, Nondepreciable Expenditure:	
Cost Estimate	\$20,000
Cost Estimate Date	16-Nov-2007
Cost Index for Inflation	PCI
Tax Deductible?	y
Annually Recurring Costs:	
Cost Estimate	\$1,000
Cost Estimate Date	16-Nov-2007
Cost Index for Inflation	PCI
User-Customized Specific Cost Estimates:	
On-Time Capital Investment	
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	

INTERIM CLEAN WATER ACT SETTLEMENT PENALTY POLICY

March 1, 1995

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ATTACHMENT 1 -- Examples of How to Calculate Statutory Maximum Penalty

ATTACHMENT 2 -- Settlement Penalty Calculation Worksheet



I. INTRODUCTION

Section 309 of the Clean Water Act (CWA), (33 U.S.C. §1319) authorizes the Administrator of the U.S. Environmental Protection Agency ("EPA" or "Agency") to bring civil judicial and administrative actions against those who violate certain enumerated requirements of the CWA. In such actions the Administrator may seek civil penalties.

EPA brings enforcement actions to require alleged violators to promptly correct the violations and remedy any harm caused by the violations. As part of an enforcement action, EPA also seeks substantial monetary penalties which promote environmental compliance and help protect public health by deterring future violations by the same violator and deterring violations by other members of the regulated community. Penalties help ensure a national level playing field by ensuring that violators do not obtain an unfair economic advantage over competitors who have done whatever was necessary to comply on time. Penalties also encourage companies to adopt pollution prevention and recycling techniques, so that they minimize their pollutant discharges and reduce their potential liabilities.

This Policy implements the Agency's February 1984 general *Policy on Civil Penalties* (#GM-21) and the companion document, *A Framework for Statute Specific Approaches to Penalty Assessments* (#GM-22), both issued on February 16, 1984. This Policy revises and hereby supersedes the *Clean Water Act Penalty Policy for Civil Settlement Negotiations* issued on February 11, 1986.¹

This document sets forth the policy of the EPA for establishing appropriate penalties in settlement of civil judicial and administrative actions. Subject to the circumstances of a particular case, this policy provides the lowest penalty figure which the Federal Government should accept in a settlement. This Policy is drafted so that violators whose actions, or inactions, resulted in a significant economic benefit and/or harmed or threatened public health or the environment will pay the highest penalties. Obviously, where settlement is not possible, the Government reserves the right to seek penalties up to the statutory maximum.

II. PURPOSE

¹ The guidances issued to interpret and supplement the 1986 Penalty Policy are also superseded. These documents are the: Addendum to the Clean Water Act Civil Penalty Policy for Administrative Penalties, issued August 28, 1987; Guidance on Penalty Calculations for POTW Failure to Implement an Approved Pretreatment Program, issued December 22, 1988; Bottomline Penalties for Cases Involving More than Five Years of Non-Compliance, issued May 11, 1992; Gravity Penalty Pilot Policy for Clean Water Act Cases, issued November 12, 1992; and Final Interim Guidance on Use of Litigation Consideration Reductions in the Clean Water Act Penalty Policy, issued October 10, 1993 (which incorporated the November 1992 Gravity Penalty Pilot Policy).

The purpose of this Policy is to further four important environmental goals. First, penalties should be large enough to deter noncompliance. Second, penalties should help ensure a level playing field by ensuring that violators do not obtain an economic advantage over their competitors. These two goals generally require that penalties recover the economic benefit of noncompliance, plus an appropriate gravity amount. Third, CWA penalties should be generally consistent across the country. This is desirable as it not only prevents the creation of "pollution havens" in different parts of the nation, but also provides fair and equitable treatment to the regulated community wherever they may operate. Fourth, settlement penalties should be based on a logical calculation methodology to promote swift resolution of enforcement actions and the underlying violations.

III. APPLICABILITY

This Policy applies to all CWA civil judicial and administrative actions filed after the effective date of this Policy, and to all such pending cases in which the government has not yet transmitted to the defendant or respondent an oral or written proposed settlement penalty amount. This Policy also may be applied (instead of the 1986 version) in pending cases in which penalty negotiations have commenced if application of this Policy would not be disruptive to the negotiations. This Policy applies to civil judicial and administrative penalties sought under CWA §309, including: violations of NPDES permit limits and conditions; discharges without an NPDES permit; violations of pretreatment standards and requirements (including local limits and pretreatment programs); violations of §405 sludge use or disposal requirements; violations of §308 information requests; and violations of §309(a) compliance orders. This Policy does not apply to actions brought exclusively under CWA §311 (oil and hazardous substance spills) nor for violations of requirements in §404 ("wetlands" cases involving disposal of dredged or fill material). Separate penalty policies apply to these two types of cases.

This Policy sets forth how the Agency generally expects to exercise its enforcement discretion in deciding on an appropriate enforcement response and determining an appropriate settlement penalty. In some cases, the calculation methodology set forth here may not be appropriate, in whole or part; in such cases, with the advance approval of the Assistant Administrator, an alternative or modified approach may be used.

This Policy only establishes how the Agency expects to calculate the minimum penalty for which it would be willing to settle a case. The development of the penalty amount to plead in an administrative or judicial complaint is developed independent of this Policy, except that the Agency may not seek a settlement penalty in excess of the statutory maximum penalty for the violations alleged in the complaint. This Policy is not intended for use by EPA, violators, courts, or administrative judges in determining penalties at a hearing or trial. (Also see §VI below).

A settlement penalty calculation is generally required before the Agency files an administrative complaint or refers a civil action to the Department of Justice. The penalty

calculation should be revised as relevant new information is discovered during the course of the litigation. The penalty calculation should be reviewed periodically (e.g., on the anniversary of when the complaint was filed) to determine if any revisions to the calculation are necessary.

IV. PENALTY CALCULATION METHODOLOGY

Before proceeding to calculate the settlement penalty, Agency staff should estimate the statutory maximum penalty in order to determine the potential maximum penalty liability of the discharger.² The penalty which the government seeks in settlement may not exceed this statutory maximum amount. Examples of how to calculate the statutory maximum are set forth in Attachment 1. In general, the statutory maximum penalty for violations of an effluent limit for a period longer than one day includes a separate penalty for each day in the time period (assuming there was a discharge on each day).

The settlement penalty is calculated based on this formula:

Penalty = Economic Benefit + Gravity +/- Gravity Adjustment Factors - Litigation Considerations - Ability to Pay - Supplemental Environmental Projects.

Each component of the penalty calculation is discussed below. A worksheet summarizing the penalty calculation is included as Attachment 2.

A. Economic Benefit

Consistent with EPA's February 1984 *Policy on Civil Penalties*, every effort should be made to calculate and recover the economic benefit of noncompliance. The objective of the economic benefit calculation is to place violators in the same financial position as they would have been if they had complied on time. Persons that violate the CWA are likely to have obtained an economic benefit as a result of delayed or completely avoided pollution control expenditures during the period of noncompliance. Commonly delayed and avoided CWA pollution control expenditures, include, but are not limited to:

- o Monitoring and Reporting (including costs of the sampling and proper laboratory analysis);
- o Capital equipment improvements or repairs, including engineering design, purchase, installation, and replacement;

² This calculation of the statutory maximum penalty, done as part of the settlement penalty calculation, is a legal evaluation, subject to the attorney-work product privilege. This calculation is not intended for use in court.

- o Operation and maintenance expenses (e.g. labor, power, chemicals) and other annual expenses; and
- o One-time acquisitions (such as land purchase).

The standard method in settlement efforts for calculating the economic benefit from delayed and avoided pollution control expenditures is through the use of the Agency's BEN model. Refer to the "BEN User's Manual" (Office of Enforcement, December 1993, or any subsequent revision) for specific information on the operation and proper use of BEN. There is no minimum amount triggering the use of the BEN model. In estimating economic benefit using the BEN model, the benefit should be calculated from the first date of noncompliance, but EPA generally does not go back no more than five years prior to the date when the complaint should be filed.³

The BEN model will produce a valid estimate of the economic benefit from delayed and avoided compliance costs only if it is properly used.⁴ Before using the BEN model you need a defensible theory of on-time compliance: that is, the pollution control system or measures the violator should have installed and operated earlier to have prevented the CWA violations at issue in the case.⁵ As a general rule, the best evidence of what the violator should have done to prevent the violations, is what it eventually does (or will do) to achieve compliance.⁶

In some cases, the BEN model may not be an appropriate methodology for estimating economic benefit or will not capture the full scope of the economic benefit. For example, if the violator is a privately-owned regulated utility, the standard BEN model may not be appropriate. In this situation, the Agency should consider a wrongful profits analysis and seek to recover the profits and other competitive market benefits the violator obtained as a result of operating during the period of violation.⁷ In another type of case, if the violator decides that its "method of

³ The five year guideline for when the BEN and gravity calculations starts is a policy decision. Legally, there is nothing that prevents EPA from calculating economic benefit or gravity from the first date of violation, even if that is more than five years before the complaint is filed, as long as the statutory maximum penalty (calculated pursuant to the five year statute of limitations) exceeds the settlement penalty amount.

⁴ The BEN model does not calculate the "competitive advantage" benefits a firm may have obtained as a result of operating in violation of the law. Such benefits include profits and increases in market share from selling goods and services during the period of violation.

⁵ The BEN model is comparing the compliance costs the violator would have paid if it had complied on-time, versus the usually smaller compliance costs it actually pays by complying late.

⁶ See BEN User's Manual, December 1993, page 6-2.

⁷ Regions should consult Headquarters for how to conduct this analysis; a financial consultant is likely to be needed.

compliance" is to cease operations at the facility, conducting a BEN analysis may be complicated.⁸ In a few unusual cases, economic benefit may be negative: this means, e.g., operating the old inefficient treatment system was more expensive than purchasing and operating a new, more efficient treatment system. When economic benefit is negative, the settlement calculation enters zero as the economic benefit.

B. Gravity Component

The gravity calculation methodology is based upon a logical scheme and criteria that quantifies the gravity of the violation based upon the CWA and its regulatory programs. Every reasonable effort must be made to calculate and recover a gravity component in addition to the economic benefit component. As EPA's February 1984 *Policy on Civil Penalties*, states on page 4:

The removal of the economic benefit of noncompliance only places the violator in the same position as he would have been if compliance had been achieved on time. Both deterrence and fundamental fairness require that the penalty include an additional amount to ensure that the violator is economically worse off than if [he] had obeyed the law.

The gravity component of the penalty is calculated for each month in which there was a violation. The total gravity component for the penalty calculation equals the sum of each monthly gravity component. The monthly gravity formula is:

$$\text{Monthly gravity component} = (1 + A + B + C + D) \times \$1,000.$$

The four gravity factors -- A, B, C, and D -- are considered for each month in which there were one or more violations. Values are assigned to each of the four factors as described in the text and tables below. In performing the gravity calculation, the monthly gravity component is calculated from the first date of noncompliance up to when the violations ceased or the date the complaint is expected to be filed, but EPA has the option to start the gravity calculation no more than five years prior to the date when the complaint should be filed. (See footnote #4.) In cases with continuing violations, the gravity calculation should be revised periodically to include additional months of violations that have occurred since the previous calculation.

⁸ In cases where a facility determines that it can only comply by ceasing operations, an appropriate BEN analysis would be to input the savings obtained from the delayed closure costs and the avoided costs of not treating the wastewater during the period of noncompliance. See Appendix B in BEN User's Manual. If it is not possible to estimate these avoided treatment costs, then a wrongful profit analysis is necessary.

"A" -- Significance of Violation (Monthly Range 0 to 20). This factor is based on the degree of exceedance of the most significant effluent limit violation in each month. Values for this factor are selected from within designated ranges; violations of toxic monthly effluent limits are weighted most heavily. Values are selected using the table below based on the effluent value which yields the highest factor A value. Regions select a particular value for factor A within the designated range. For purposes of this table conventional and nonconventional pollutants include biochemical oxygen demand, chemical oxygen demand, total oxygen demand, dissolved oxygen, total organic carbon, total suspended solids, total dissolved solids, inorganic phosphorous compounds, inorganic nitrogen compounds, oil and grease, calcium, chloride, fluoride, magnesium, sodium, potassium, sulfur, sulfate, total alkalinity, total hardness, aluminum, cobalt, iron, vanadium and temperature. Factor A values for fecal coliform and pH, which are calculated using logarithmic scales, are calculated using the special scales at the bottom of the table. All other pollutants are classified as toxic pollutants.

If there were no effluent limit violations in a particular month, but there were other violations, then factor A is assigned a value of zero in that month's gravity calculation. In pretreatment cases in which the industrial user was not required to provide monthly compliance reports, and provided less frequent effluent data (e.g., in a 40 CFR §403.12(e) periodic compliance report), any effluent violations reported in the report are assumed to represent identical violations in each month of the reporting period for purposes of calculating gravity if there is substantial evidence supporting this assumption. Examples of such evidence are: (1) no pretreatment equipment was in operation during the period and (2) the production and treatment operations remained consistent during the period. This means the monthly gravity calculation, with a factor A value, should be repeated for all of the months covered by the report.⁹ If there was no evidence indicating continuing violations throughout the period covered by the periodic compliance report, then a value for Factor A should be assigned only for the month in which the sampling occurred. If the industrial user did not notify the control authority and repeat the sampling after finding the effluent violation as required by 40 CFR §403.12(g)(2), then an appropriate value for gravity Factor D should be assigned for this notification or monitoring violation(s).

⁹ The pretreatment regulations, 40 CFR §403.12(g)(3), require the periodic compliance reports to contain data which "is representative of conditions occurring during the reporting period." For example, if an industrial user reports in its December (semi-annual) periodic compliance report that it violated the daily maximum cadmium limit by 150% in September, and this was the most significant effluent violation, using the Gravity Factor A Table, factor A will be assigned a value between 3 and 7 for each of the six months covered by the report (July - December) if, e.g., EPA had evidence that the facility lacked treatment equipment during that period and wastewater generating operations were consistent during the period.

GRAVITY FACTOR A -- SIGNIFICANCE OF THE VIOLATION				
Select a value for factor A based on the effluent limit violated in the month which produces the highest range of values for factor A.				
Percent by which effluent limit was exceeded:			Factor A Value Ranges	
Monthly Average	7-day Average	Daily Maximum	Toxic Pollutants	Conventional & Nonconventional Pollutants
1 - 20	1 - 30	1 - 50	1 - 3	0 - 2
21 - 40	31 - 60	51 - 100	1 - 4	1 - 3
41 - 100	61 - 150	101 - 200	3 - 7	2 - 5
101 - 300	151 - 450	201 - 600	5 - 15	3 - 6
301 - >	451 - >	601 - >	10 - 20	5 - 15
Percent Exceedance of Fecal Coliform Limit:		Standard Units above or below pH limit:	Factor A Value Ranges:	
0 - 100		0 - .50	0 - 5	
101 - 500		.51 - 2.0	2 - 8	
501 - 5,000		2.01 - 3.0	4 - 10	
5,001 - >		3.01 - 4.0	6 - 12	
		4.01 - >	8 - 15	

"B" -- Health and Environmental Harm (Monthly Range 0 to 50). A value for this factor is selected for each month in which one or more violations present actual or potential harm to human health or to the environment. Values are selected using the table below based on the type of actual or potential harm that yields the highest factor value.

GRAVITY FACTOR B – HEALTH AND ENVIRONMENTAL HARM	
Type of Actual or Potential Harm	Factor B Value Ranges
Impact on Human Health (e.g., interference with drinking water supplies, harm or increased risks to subsistence fishing)	10 - 50
Impact on Aquatic Environment (or the POTW)	
Water quality-based effluent standard(s) or whole effluent toxicity limit violated	1 - 10
Fish kill, beach closing, restrictions on use of water body; or pass through or interference at the POTW caused by the IU discharge.	4 - 50
Other impact on aquatic environment	2 - 25

"C" -- Number of Effluent Limit Violations (Monthly Range 0 to 5). This factor is based on the total number of effluent limit violations each month. (Violations of interim limitations in administrative orders are not counted here, but included as part of recalcitrance.) In order to properly quantify the gravity of the violations, all effluent limit violations are considered and evaluated. Violations of different parameters at the same outfall are counted separately and violations of the same parameter at different outfalls are counted separately. The guidelines in Attachment 1 for calculating the statutory maximum penalty are generally not applicable for selecting the value for gravity factor C (e.g., violation of a weekly limit need not be calculated as 7 separate violations). A minimum factor C value of 1 is generally appropriate whenever there are violations of two or more different pollutants. Values for this factor may be selected by comparing the number of effluent limits exceeded with the number of effluent limits in the permit: e.g., if all of the limits in the permit were violated in a month, a value of 5 would be appropriate; if 50 percent of the limits in the permit were violated, a factor of 2 or 3 would be appropriate.

"D" -- Significance of Non-effluent Limit Violations. This factor has a value ranging from 0 (zero) to 70 and is based on the severity and number of the six different types of non-effluent limitation requirements violated each month. There are six types of non-effluent violations: 1) monitoring and reporting; 2) pretreatment program implementation; 3) sludge handling; 4) unauthorized discharges; 5) permit milestone schedules; and 7) other types of non-effluent violations. The value for factor D for each month in which there is a non-effluent limit violation is selected pursuant to the table on the next page. The factor D value for a given month is the sum of the highest value for each type of non-effluent limit violation.

With regards to monitoring and reporting violations, the failure to submit a report in a timely manner should generally not be treated as a continuing violation past the month in which the report is due. For example, if an industrial user fails to submit a baseline monitoring report as required by 40 CFR 403.12(b), this should be counted as a violation only in the month when the

report was due. Given the importance of such a report, if the violator fails to submit the report at all a factor D value of 5 or more may be appropriate for this violation.¹⁰

With regards to pretreatment program implementation violations, "key program activities" include: identifying all industrial users; issuing appropriate control mechanisms to all significant industrial users (SIUs); inspecting SIUs; enforcing industrial user self-monitoring; enforcing pretreatment standards (including local limits); submitting pretreatment reports to the approval authority; and failing to comply with other significant pretreatment program obligations. The 1989 *Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Requirements* or subsequent revisions may be helpful in evaluating the seriousness of pretreatment program implementation violations.

As an example of calculating factor D for a given month, assume a discharger did not sample for 4 of the 8 parameters in its permit, the discharge monitoring report was submitted 20 days late, and there were several days of discharge of a process wastestream through an unauthorized outfall without any treatment. Using the factor D table, for Type 1, a value of 4 may be selected based on the failure to conduct sampling for half of the parameters; the delay in submitting sampling data is not considered since the other Type 1 violation produces a higher value. For the unauthorized discharge of the process wastestream, a value of 6 may be selected for Type 4. Since there are no Type 2, 3, 5, and 6 violations, a value of 0 is entered for each of these Types. Thus, the total value for factor D for this month is 10.

¹⁰ The failure to provide the regulatory agency with required sampling data on the discharge is a very serious violation as this eliminates the government's ability to perform necessary oversight and allows the discharger to avoid the possible application of gravity factor A.

GRAVITY FACTOR D – NON-EFFLUENT LIMIT VIOLATIONS	
THE FACTOR D VALUE FOR A GIVEN MONTH IS THE SUM OF THE HIGHEST VALUE FOR EACH TYPE OF NON-EFFLUENT LIMIT VIOLATION.	
Type and Extent of Violation	Factor D Value Ranges
1. Effluent Monitoring and Reporting Violations:	
Failure to conduct or submit adequate pollutant sampling data for 1 or more pollutant parameters (but not all parameters)	1 to 6
Failure to conduct or submit any required pollutant sampling data in a given month but with a reasonable belief that the facility was in compliance with applicable limits.	2 to 6
Failure to conduct or submit any required pollutant sampling data in a given month without a reasonable basis to believe that facility was otherwise in compliance with applicable limits.	6 to 10
Failure to conduct or submit whole effluent toxicity sampling data	4 to 10
Delay in submitting sampling data	0 to 5
Failure to submit a pretreatment baseline report, 90-day compliance report, or periodic compliance report (40 CFR 403.12(b), (d), or (e),) or failure to sample again after finding a violation (40 CFR 403.12(g)(2)).	2 to 8
Any other monitoring or reporting violation	0 to 10
2. Pretreatment Program Implementation Violations :	
All key program activities implemented, with some minor violations.	0 to 4
One or two key program activities not implemented	2 to 6
Many key program activities not implemented	4 to 8
Few if any program activities implemented	6 to 10
3. Failure to properly control, treat, or dispose of sludge	1 to 10
4. Unauthorized discharge: e.g., discharge through an unpermitted outfall, discharge of a wastestream not identified in the permit, sewer overflows, or spill (other than oil or §311 hazardous substance)	1 to 20
5. Violation of permit milestone schedule	1 to 10
6. Any other type of noneffluent limit violation	1 to 10

C. Gravity Adjustment Factors

In certain circumstances as explained below, the total monthly gravity amount may be adjusted by three factors: flow reduction factor (to reduce gravity); history of recalcitrance (to increase gravity); and the quick settlement reduction factor (to reduce gravity). The resulting figure -- benefit + (gravity +/- gravity adjustments) -- is the preliminary penalty amount.

Flow Reduction Factor for Small Facilities. The total monthly gravity amount may be reduced based on the flow of the facility. This factor is applicable to direct and indirect discharges, both municipal and non-municipals. Flow reduction percentages are selected using the table below. In order to ensure that these reductions are directed at small facilities (that are not otherwise part of large corporation), this gravity reduction does not apply to non-municipals if the facility or parent corporation employs more than 100 individuals.

FLOW REDUCTION FACTOR	
AVERAGE DAILY WASTEWATER DISCHARGE FLOW (in gallons per day)	PERCENTAGE REDUCTION FACTOR OF TOTAL GRAVITY
Less than 5,000	50
Between 5,000 and 9,999	40
Between 10,000 and 19,999	30
Between 20,000 and 29,999	20
Between 30,000 and 49,999	10
Between 50,000 and 99,999	5
100,000 and above	0 (i.e., no reduction)

History of Recalcitrance Adjustment Factor. The "recalcitrance" factor is used to increase the penalty based on a violator's bad faith, or unjustified delay in preventing, mitigating, or remedying the violation. Recalcitrance is also present if a violator failed to comply with an EPA issued administrative compliance order or a §308 information request, or with a prior state or local enforcement order. This factor is applied by multiplying the total gravity component by a percentage between 0 and 150. In administrative penalty actions, violations of administrative compliance orders are not included in the recalcitrance calculation (because EPA lacks the authority to seek penalties in the administrative forum for violations of administrative compliance orders).

A minimum recalcitrance factor of 10 percent is generally appropriate for each instance in which a violator fails to substantially comply in a timely manner with an administrative compliance

order ("AO"), a §308 information request, or a state enforcement order. Thus, if a particular discharger violated 3 AOs, a minimum recalcitrance factor of 30 percent is generally appropriate. If a violator completely fails to comply with an AO or §308 request, a recalcitrance factor of 20 percent may be appropriate for that failure, while if there were only minor violations of the AO or request, a recalcitrance factor of 5 percent may be appropriate for that violation.

Quick Settlement Adjustment Factor. In order to provide an extra incentive for violators to negotiate quickly and reasonably, and in recognition of a violator's cooperativeness, EPA may reduce the gravity amount by 10 percent if EPA expects the violator to settle quickly. For purposes of this reduction factor, in Class I administrative enforcement actions, a quick settlement is when the violator signs an administrative consent order resolving the violations within four months of the date the complaint was issued or within four months of when the government first sent the violator a written offer to settle the case, whichever date is earlier. In Class II administrative enforcement actions and judicial cases, the controlling time period is 6 and 12 months, respectively. If the violator is not able to sign the consent order within this time period, this adjustment does not apply.

Environmental Auditing Adjustment Factor. This interim revision of the Penalty Policy contains no explicit gravity adjustment factor for violators that conduct, or fail to conduct, environmental audits, disclose the results to the government, promptly correct the violations and remedy any harm. This interim revision of the Policy (and the original 1986 version), however, automatically produces smaller penalty amounts for violators who promptly remedy violations. This is because violators who promptly remedy violations will have shorter histories of violations and this automatically reduces both the economic benefit and gravity amounts. After the Agency completes its review of its environmental auditing policy, this Policy may be reissued with an explicit adjustment factor for this factor. In the interim, Regions, may with the advance approval of Headquarters, appropriately adjust the gravity amount based on the presence, or absence, of an environmental auditing program.

D. Litigation Considerations (to decrease preliminary penalty amount)

1. Overview. The government should evaluate every penalty with a view toward litigation and attempt to ascertain the maximum civil penalty the court or administrative judge is likely to award if the case proceeds to trial or hearing. Many enforcement cases may have mitigating factors, weaknesses or equitable problems that could be expected to persuade a court to assess a penalty less than the statutory maximum amount. The simple existence of weaknesses in a case, however, should not automatically result in a litigation consideration reduction of the preliminary bottom-line settlement penalty amount (economic benefit + gravity ± gravity adjustment factors). The government may reduce the amount of the civil penalty it will accept at settlement to reflect weaknesses in its case where the facts demonstrate a substantial likelihood that the government will not achieve a higher penalty at trial.

2. Legal Evaluation. The mere existence of weaknesses or limitations in a case should not result in a reduction of the preliminary bottom-line settlement penalty amount, unless the Agency determines that the preliminary settlement amount is more than EPA is likely to obtain at trial.¹¹ In evaluating potential litigation consideration reductions, EPA legal staff should: (a) Determine the statutory maximum penalty; (b) Evaluate what penalty the court might assess at trial given the particular strengths and weaknesses of the case; and, (c) Compare this amount to the preliminary settlement amount (benefit + gravity + recalcitrance).

While Agency legal staff cannot predict the exact penalty amount a court might assess at trial, case law indicates that a court should use the statutory maximum as its preliminary penalty figure, and then reduce that amount, as appropriate, using only the penalty assessment factors in §309(d) of the Act. Fitting the facts of EPA's enforcement case to the method adopted by the courts in recent CWA penalty decisions provides the Agency with the clearest method to estimate penalty litigation outcomes.¹²

3. Application. Adjustments for litigation considerations are taken on a factual basis specific to the case. Before a complaint is filed, the application of certain litigation considerations is almost always premature, since the Agency generally does not have enough information to fully evaluate litigation risk regarding the assigned judge's previous ruling on similar matters, the court's informed opinion, or witness performance. Other litigation considerations, including evidentiary matters, witness availability, and equitable defenses often may not be reliably demonstrated until after case filing. Reductions for these litigation considerations are more likely to be appropriate after the Agency obtains an informed view, through discovery and settlement activities, of the strengths and weaknesses in its case and how the specific court views penalties in the case. Pre-filing settlement negotiations are often helpful in identifying and evaluating litigation considerations, especially regarding potential equitable defenses, and thus reductions based on such litigation considerations may be appropriately taken before the complaint is filed. As a general rule, the greater the disparity between the maximum statutory penalty and the preliminary penalty amount, the less litigation considerations should affect the Agency's settlement position.

¹¹ In many situations, weaknesses or limitations in a case are already accounted for in the preliminary penalty calculation. For example, the gravity calculation will be less in those circumstances in which the period of violation was brief, the exceedances of the limitations were small, the pollutants were not toxic, or there is no evidence of environmental harm. The economic benefit calculation also will be smaller when the violator has already returned to compliance since the period of violation will be shorter.

¹² The prevailing CWA case law on the assessment of penalties indicates that, in assessing a penalty, a court begins at the statutory maximum amount and reduces the penalty based on the specific factors set out in section 309(d) of the CWA. See Atlantic States Legal Foundation v. Tyson Foods, 897 F.2d 1128 (11th Cir. 1990). In contrast, settlement penalties calculated pursuant to this Policy build the Agency's bottom line negotiating position upward from zero, generally ending up with a figure orders of magnitude less than the statutory maximum penalty.

4. Possible Litigation Considerations. While there is no universal list of litigation considerations, the following factors may be appropriate in evaluating whether the preliminary settlement penalty exceeds the penalty the Agency would likely obtain at trial:

- a. Known problems with the reliability or admissibility of the government's evidence proving liability or supporting a civil penalty;
- b. The credibility, reliability, and availability of witnesses;¹³
- c. The informed, expressed opinion of the judge assigned to the case (or person appointed by the judge to mediate the dispute), after evaluating the merits of the case.¹⁴
- d. The record of the judge in any other environmental enforcement case presenting similar issues. (In contrast, the reputation of the judge, or the judge's general demeanor, without a specific penalty or legal statement on a similar case, is rarely sufficient as a litigation consideration.)
- e. Statements made by federal, State or local regulators that may allow the respondent or defendant to credibly argue that it believed it was complying with the federal law under which EPA is seeking penalties.
- f. The payment by the defendant of civil penalties for the same violations in a case brought by another plaintiff.¹⁵
- g. The development of new, relevant case law.

¹³ The credibility and reliability of witnesses relates to their demeanor, reputation, truthfulness, and impeachability. For instance, if a government witness has made statements significantly contradictory to the position he is to support at trial, his credibility may be impeached by the respondent or defendant. The availability of a witness will affect the settlement bottom-line if the witness cannot be produced at trial; it does not relate to the inconvenience or expense of producing the witness at trial.

¹⁴ This factor, except as provided below with respect to the record of the judge or other trier of fact, may not be applied in anticipation, or at the stage of initial referral, and should not be distorted by taking at face value what a judge attempting to encourage a settlement might say.

¹⁵ If the defendant has previously paid civil penalties for the same violations to another plaintiff, this factor may be used to reduce the amount of the settlement penalty by no more than the amount previously paid for the same violations. (If the previous plaintiff was a State qualified to preempt federal enforcement under EPA's interpretation of Section 309(g)(6), EPA's complaint should not include counts already addressed by a penalty. See "Supplemental Guidance on Section 309(g)(6) (A) of the Clean Water Act," memorandum from Frederick F. Stiehl, Enforcement Counsel for Water, to Regional Counsels, March 5, 1993, and "Guidance on State Action Preempting Civil Penalty Enforcement Actions Under the Federal Clean Water Act, OE/OW, August 28, 1987.)

h. A blend of troublesome facts and weak legal arguments such that the Agency faces a significant risk of obtaining a nationally significant negative precedent at trial.

5. Not Litigation Considerations. In contrast to the above list of possible litigation considerations, the following items are not litigation considerations:

- a. A generalized goal to avoid litigation or to avoid potential precedential areas of the law.¹⁶
- b. A duplicative use of elements included or assumed elsewhere in the Penalty Policy, such as inability to pay, "good faith"¹⁷, "lack of recalcitrance", or a lack of demonstrated environmental harm¹⁸.
- c. Off-the-record statements by the court, before it has had a chance to evaluate the specific merits of the case are, by themselves, not a reason to reduce the preliminary settlement penalty amount. (Compare with 4.c above.)
- d. The fact that the receiving water is already polluted or that the water can assimilate additional pollution is not a litigation consideration.¹⁹
- e. By itself, the failure of a regulatory agency to initiate a timely enforcement action is not a litigation consideration.²⁰

¹⁶ A generalized desire to minimize litigation costs is not a litigation consideration.

¹⁷ The efforts of the violator to achieve compliance or minimize the violations after EPA, a State or pretreatment control authority has initiated an enforcement action (i.e., an administrative or judicial enforcement action) do not constitute "good faith" efforts. If such efforts are undertaken before the regulatory agency initiates an enforcement response, the settlement penalty calculation already includes such efforts through a potentially smaller economic benefit amount, a shorter or less serious gravity component, or a lack of any recalcitrance. The Penalty Policy assumes all members of the regulated community will make good faith efforts both to achieve compliance and remedy violations when they occur; consequently the settlement penalty calculation begins at zero and builds upward, with no reductions for good faith. In contrast, the absence of good faith efforts provides the basis for increasing the penalty through use of the recalcitrance factor.

¹⁸ The gravity calculation will reflect the lack of environmental harm. Courts have considered the extent of environmental harm associated with violations in determining the "seriousness of violations" pursuant to the factors in §309(d), and have used the absence of any demonstrated or discrete identified environmental harm to impose less than the statutory maximum penalty. Proof of environmental harm, however, is neither necessary for liability nor for the assessment of penalties.

¹⁹ See, e.g., Natural Resources Defense Council v. Texaco Refining and Mktg., 800 F. Supp. 1, 24 (D. Del. 1992).

²⁰ See PIRG v. Powell Duffryn, 913 F. 2d 64, 80-81 (3rd Cir. 1990).

6. Approval of Litigation Considerations. The Agency recognizes that the quantitative evaluation of litigation considerations often reflects subjective legal opinions. Therefore, EPA Regions may reduce the preliminary penalty amount for litigation considerations for up to one-third of the net gravity amount (i.e., gravity as modified by the gravity adjustment factors) without Headquarters approval (where such approval would otherwise be required). Of course, such a reduction must be fully explained and maintained in the case file. This reduction is not applicable in municipal cases in which the tables in D.7 below are used.

7. Municipal Cases. In those cases against a municipality or other public entity (such as a sewer authority) in which the entity has failed to comply with the Clean Water Act but nevertheless did make good faith efforts to comply, the Agency may mitigate the preliminary penalty amount based on this national municipal litigation consideration. The preliminary penalty amount (economic benefit + gravity ± gravity adjustments) may be mitigated to no less than the cash penalty determined by operation of the two tables set forth below. In addition, the cash penalty amount established by the tables may be reduced based on compelling ability to pay considerations and by up to 40 percent for appropriate supplemental environmental projects. Reducing the cash penalty below the amount established by the national municipal litigation consideration (other than for ability to pay considerations or for 40 percent based on a SEP) requires compelling evidence of other considerations and the prior approval of Headquarters (even if Headquarters' approval of the settlement would otherwise not be required).

The national municipal litigation consideration is a discretionary factor and the Agency is under no obligation to use it in all municipal cases.²¹ It should only be used if there is some evidence that the municipality made a good faith effort to comply. The national municipal litigation consideration is based on the economic benefit, environmental impact, duration and size of the facility, and is derived, in part, on the settlement penalties EPA has obtained from judicial municipal cases settled between October 1988 and December 1993. There are three steps to calculate a penalty using the national municipal litigation consideration tables.

1. Using Table A determine the economic benefit environmental impact factor amount. This dollar amount is found by selecting an appropriate value from the range in the appropriate cell in Table A. The economic benefit is the benefit previously calculated pursuant to section IV.A. above. Impact of the violations is based on the actual or potential (risk) of harm caused, in whole or part, by the violations.

2. Using Table B determine the population months of violations factor amount. This dollar amount is found by selecting an appropriate value from the range in the appropriate cell in Table B. The service population is the total population served by the violating

²¹ The national municipal litigation consideration is primarily intended to apply in cases in which there has been a failure to timely construct treatment facilities or other capital projects; it may not be appropriate in pretreatment failure to implement cases.

POTW(s) during the period. The months of violation are the total number of months calculated pursuant to section IV.B above. (If the service population exceeds 3 million, the Table B value is found by combining values from multiple rows. For example, if the service population was 4.5 million, the factor B penalty contribution would be the sum of a value selected from the appropriate cell in the 1,000,001 to 2,000,000 population row plus a value selected from the appropriate cell in the 2,000,001 to 3,000,000 population row.)

3. Sum the selected factor values from Tables A and B. Note that the factor values in Tables A and B are in thousands of dollars.

NATIONAL MUNICIPAL LITIGATION CONSIDERATION -- TABLE A

ECONOMIC BENEFIT ENVIRONMENTAL IMPACT FACTOR IN THOUSANDS OF DOLLARS	ECONOMIC BENEFIT RANGES IN THOUSANDS OF DOLLARS									
	.001 to 50	50 to 100	100 to 250	250 to 1,000	1,000 to 2,000	2,000 to 5,000	5,000 to 10,000	10,000 to 25,000	greater than 25,000	
No actual or potential harm.	6 to 9	11 to 15	17 to 23	32 to 43	49 to 67	75 to 103	110 to 151	167 to 230	283 to 389	
Minor actual or potential harm (e.g., water quality-based effluent or whole effluent toxicity limit violated).	9 to 11	16 to 19	25 to 29	47 to 55	73 to 86	112 to 131	164 to 192	251 to 293	424 to 495	
Moderate actual or potential harm (e.g., fish kill, beach closing, restrictions on use of water body, raw sewage discharges).	13 to 14	22 to 25	33 to 38	63 to 71	98 to 110	150 to 168	219 to 246	335 to 376	566 to 636	
Severe actual or potential harm (e.g., repeated beach closings, interference with drinking water supplies).	17 to 32	30 to 55	46 to 84	87 to 158	135 to 245	206 to 374	301 to 548	460 to 837	778 to 1,414	

NATIONAL MUNICIPAL LITIGATION CONSIDERATION -- TABLE B
 POPULATION MONTHS OF VIOLATION FACTOR IN THOUSANDS OF DOLLARS

SERVICE POPULATION	MONTHS OF VIOLATION											
	1 to 6	7 to 12	13 to 18	19 to 24	25 to 30	31 to 36	37 to 42	43 to 48	49 to 54	55 to 60	61 to 66	66>
100 to 5,000	0 to 0.6	0 to 1.8	0.1 to 3	0.1 to 4.2	0.1 to 5.4	0.1 to 6.6	0.2 to 7.8	0.2 to 9	0.2 to 10.2	0.2 to 11.4	0.3 to 12.6	0.3 to 14
5,001 to 25,000	0.6 to 3	1.8 to 9	3 to 15	4.2 to 21	5.4 to 27	6.6 to 33	7.8 to 39	9 to 45	10.2 to 51	11.4 to 57	12.6 to 63	14 to 70
25,001 to 50,000	3 to 6	9 to 18	15 to 30	21 to 42	27 to 54	33 to 66	39 to 78	45 to 90	51 to 102	57 to 114	63 to 126	70 to 140
50,001 to 100,000	6 to 12	18 to 36	30 to 60	42 to 84	54 to 108	66 to 132	78 to 156	90 to 180	102 to 204	114 to 228	126 to 252	140 to 280
100,001 to 250,000	12 to 30	36 to 90	60 to 150	84 to 210	108 to 270	132 to 330	156 to 390	180 to 450	204 to 510	228 to 570	252 to 630	280 to 700
250,001 to 500,000	30 to 60	90 to 180	150 to 300	210 to 420	270 to 540	330 to 660	390 to 780	450 to 900	510 to 1,020	570 to 1,140	630 to 1,260	700 to 1,400
500,001 to 1,000,000	60 to 120	180 to 360	300 to 600	420 to 840	540 to 1,080	660 to 1,320	780 to 1,560	900 to 1,800	1,020 to 2,040	1,140 to 2,280	1,260 to 2,520	1,400 to 2,800
1,000,001 to 2,000,000	120 to 240	360 to 720	600 to 1,200	840 to 1,680	1,080 to 2,160	1,320 to 2,640	1,560 to 3,120	1,800 to 3,600	2,040 to 4,080	2,280 to 4,560	2,520 to 5,040	2,800 to 5,600
2,000,001 to 3,000,000	240 to 360	720 to 1,080	1,200 to 1,800	1,680 to 2,520	2,160 to 3,240	2,640 to 3,960	3,120 to 4,680	3,600 to 5,400	4,080 to 6,120	4,560 to 6,840	5,040 to 7,560	5,600 to 8,400

E. Ability to Pay (to decrease preliminary penalty amount)

The Agency typically does not request settlement penalties, which combined with the cost of the necessary injunctive relief, that are clearly beyond the financial capability of the violator. This means EPA should not seek a penalty that would seriously jeopardize the violator's ability to continue operations and achieve compliance, unless the violator's behavior has been exceptionally culpable, recalcitrant, threatening to human health or the environment, or the violator refuses to comply.

The adjustment for ability-to-pay may be used to reduce the settlement penalty to the highest amount that the violator can reasonably pay and still comply with the CWA. The violator has the primary burden of establishing the claim of inability to pay. The violator must submit the necessary information demonstrating actual inability to pay as opposed to unwillingness to pay. Further, the claim of inability to pay a penalty should not be confused with a violator's aversion to make certain adjustment in its operations in order to pay the penalty.²²

If the violator is unwilling to cooperate in demonstrating its inability to pay the penalty, this adjustment should not be considered in the penalty calculation, because, without the cooperation of the violator, the Agency will generally not have adequate information to determine accurately the financial position of the violator. In some cases, the Agency may need to consult a financial expert to properly evaluate a violator's claim of inability to pay.

If the violator demonstrates an inability to pay the entire negotiated penalty in one lump sum (usually within 30 days of consent decree entry), a payment schedule should be considered. The penalty could be paid in scheduled installments with appropriate interest accruing on the delayed payments. The period allowed for such installment payments should generally not extend beyond three years.

If a payment schedule will not resolve the violator's ability-to-pay issue, as a last recourse, the Agency can reduce the amount it seeks in settlement to a more appropriate amount in situations in which inability-to-pay can be clearly documented and reasonably quantified.

In the case of municipalities, one quick way to evaluate whether there might be an ability to pay issue is to examine the most recent bond rating (within the past 5 years). If the bond rating is below BBB (Standard & Poor's rating scale) or below Baa (Moody's rating scale), the community may be in poor financial condition and a detailed financial evaluation by an appropriate expert may be necessary to determine whether the financial condition affects the ability to pay a penalty.

²² For example, a business may have to use funds that were previously designated to develop a new product line to pay a penalty and thus the new product line would be delayed. Similarly, a penalty could be paid using company funds that otherwise would have gone to pay its executives bonuses.

V. SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEPs)

Supplemental Environmental Projects (SEPs) are defined by EPA as environmentally beneficial projects which a violator undertakes, but is not otherwise legally required to perform, in exchange for favorable penalty consideration in settlement of an enforcement action. In order for a violator to receive a settlement penalty reduction in exchange for performing such a project, the project must conform with the EPA's SEP Policy, or be approved in advance by the Assistant Administrator²³. A SEP may be allowed in a municipal case, even if the cash penalty is less than economic benefit, provided the cash penalty is no less than 60 percent of the amount provided in section IV.D.7. Use of SEPs in a particular case is entirely within the discretion of EPA, and the Department of Justice in judicial cases.

VI. OTHER TYPES OF PENALTIES

This Policy only establishes how the Agency expects to calculate the minimum penalty for which it would be willing to settle a case. The development of the penalty amount to plead in an administrative or judicial complaint is developed independent of this Policy. This Policy is not intended and should not be used as the basis for a penalty demand in a complaint, an administrative hearing or, a civil judicial trial. The Agency will not use this Penalty Policy in arguing for a penalty at trial or in an administrative penalty hearing.²⁴ In those cases which proceed to trial or an administrative hearing, the Agency should seek a penalty higher than that for which it is willing to settle.

If the "bottom-line" settlement penalty calculated pursuant to this Policy exceeds the maximum penalty that can be obtained in an administrative penalty action pursuant to §309(g) of the CWA, the Agency should instead proceed judicially.²⁵ In rare circumstances, the statutory maximum penalty may be less than the "bottom-line" settlement penalty in civil judicial cases; in such circumstances, the statutory maximum penalty should serve as the new "bottom-line" penalty.

²³ See "EPA Policy on the Use of Supplemental Environmental Projects in Enforcement Settlements", transmitted on February 12, 1991 by the Assistant Administrator for Enforcement, or subsequent revisions.

²⁴ If that were to occur, then the defendant would have no incentive to settle with EPA. See *Guidance on the Distinctions Among Pleading, Negotiating, and Litigating Civil Penalties for Enforcement Cases Under the Clean Water Act*, OECM/OW, January 19, 1989.

²⁵ For further guidance on choosing between administrative and judicial enforcement options, see "Guidance on Choosing Among Clean Water Act Administrative, Civil and Criminal Enforcement Actions", which was Attachment 2 to the August 28, 1987 "Guidance Documents and Delegations for Implementation of Administrative Penalty Authorities Contained in 1987 Clean Water Act Amendments".

VII. DOCUMENTATION, APPROVALS, AND CONFIDENTIALITY

Each component of the settlement penalty calculation (including all adjustments and subsequent recalculations) must be clearly documented with supporting materials and written explanations in the case file. In all cases in which a settlement penalty may not comply with the provisions of this Policy, or in a case in which application of this Policy appears inappropriate, the penalty must be approved in advance by the EPA Assistant Administrator for Enforcement and Compliance Assurance.

Documentation and explanations of a particular settlement penalty calculation constitute confidential information that is exempt from disclosure under the Freedom of Information Act, is outside the scope of discovery, and is protected by various privileges, including the attorney-client privilege and the attorney work-product privilege. While individual settlement penalty calculations are confidential documents, this Policy is a public document and may be released to anyone upon request. Further, as part of settlement negotiations between the parties, the Agency may choose to release parts of the case-specific settlement calculations. The release of such information may only be used for settlement negotiations in the case at hand and, of course, may not be admitted into evidence in a trial or hearing. See Rule 408 of Federal Rules of Evidence.

This Policy is purely for the use of U.S. EPA enforcement personnel in settling cases. EPA reserves the right to change this Policy at any time, without prior notice, or to act at variance to this Policy. This Policy does not create any rights, implied or otherwise, in any third parties.

ATTACHMENT 1 TO INTERIM CWA SETTLEMENT PENALTY POLICY

EXAMPLES OF HOW TO CALCULATE STATUTORY MAXIMUM PENALTY

Violation scenario	Maximum statutory penalty*	Authority
Violation of daily maximum limit for pollutant A, on the 5th of January.	\$25,000	Plain reading of CWA, § 309(d): "\$25,000 per day for each violation"
Violation of daily maximum limit for pollutant A, on the 5th, 10th, and 15th of January.	\$75,000	Plain reading of CWA, § 309(d): "\$25,000 per day for each violation"
Violation of daily maximum limits for each of pollutants A and B, on the 5th of January.	\$50,000	<u>Tyson Foods</u> and <u>Powell Duffryn</u> , as well as plain reading of CWA, § 309(d): "\$25,000 per day for each violation"
Violation in January of weekly average for pollutant A.	\$25,000 per day, multiplied by 7 days \$175,000.	<u>Tyson Foods</u> , 897 F.2d at 1139. Also see, <u>Gwaltney</u> , 897 F. 2d at 314.
Violation in January of monthly average limit for pollutant A.	\$25,000 per day, multiplied by 31 days in January = \$775,000	<u>Tyson Foods</u> , 897 F.2d at 1139. Also see, <u>Gwaltney</u> , 897 F. 2d at 314.
Violation in January of monthly average limit for pollutant A, in which there is evidence that there were no discharges on 4 days (e.g. plant shut down on Sundays).	\$25,000 per day, multiplied by 27 days in January = \$675,000	<u>Natural Resources Defense Council v. Texaco</u> , 2 F.3d 493, 507-508 (3rd Cir. 1993).
Violation in January of monthly average limits for both pollutants A and B.	\$50,000 per day, multiplied by 31 days in January, = \$1,550,000	<u>Tyson Foods</u> , 897 F.2d at 1140, footnote 22
Violation in January of monthly average limit for pollutant A, and of daily maximum limit for pollutant B on January 5th and 15th.	\$775,000 for pollutant A, + \$50,000 (\$25,000 per day x 2) for pollutant B, = \$825,000	<u>Tyson Foods</u> , 897 F.2d at 1140, under "The interaction of daily and monthly violations"
Violation in January of monthly average limit for pollutant A, and of daily maximum limit for pollutant A on Jan. 5th and 15th.	25,000 per day, multiplied by 31 days in January, = \$775,000.	<u>Tyson Foods</u> , 897 F.2d at 1140, under "The interaction of daily and monthly violations"
Failure to properly monitor** for pollutant A on 4 required days in January.	\$100,000.	Statutory language, CWA §309.

Violation scenario	Maximum statutory penalty*	Authority
Failure to properly monitor for pollutants A, B, and C on January 15.	\$75,000.	Statutory language, CWA §309.
Failure to monitor for a monthly pollutant parameter.	\$25,000 for each day in which the discharger was required to monitor for that pollutant.	Statutory language, CWA §309.
Failure to submit adequate discharge monitoring report on time (each failure to monitor for a particular pollutant is subject to a separate penalty calculation).	\$25,000.	Statutory language, CWA §309.
Failure to timely submit a report or other document (each failure to timely complete an activity covered by the report is subject to a separate penalty calculation).	\$25,000	Settlement policy discretion.

NOTES:

* For administrative penalty cases the penalty per day for each violation is \$10,000 and may not exceed the total penalty amount allowed in a Class I or Class II administrative proceeding.

** For purposes of calculating penalties, the act of monitoring for a particular pollutant includes the sequence of events starting with the collection of the wastewater sample through completion of the analytical testing of the sample. The obligation to report the results of the monitoring is a separate act subject to a separate penalty calculation.

The guidelines set forth here reflect EPA's policy on how to calculate the statutory maximum penalty with regards to ensuring that all settlement penalties sought pursuant to the Penalty Policy do not exceed such statutory maximum. At trial or in a hearing, EPA reserves the right to calculate the statutory maximum pursuant to more aggressive assumptions.

ATTACHMENT 2 TO INTERIM CWA SETTLEMENT PENALTY POLICY

Case Name _____ Date _____

Prepared by _____ and _____ [attorney name].

SETTLEMENT PENALTY CALCULATION WORKSHEET

STEP	AMOUNT
1. Calculate Statutory Maximum Penalty (period of violations from ____ through ____)	
2. Economic Benefit (attach BEN printouts, with explanations for calculations)	
3. Total of Monthly Gravity Amounts	
4. Economic Benefit + Gravity (lines 2 + 3)	
5. Gravity Adjustments	
a. Flow Reduction Factor ____ (0 to 50%) X line 3	
b. Recalcitrance Factor ____ (0 to 150%) X line 3	
c. Quick Settlement Reduction ____ (0 or 10%) X line 3	
d. Total gravity adjustments (negative amount if net gravity reduction) (lines 5.b. - 5.c - 5.a)	
6. Preliminary Penalty Amount (lines 4 + 5.d)	
7. Litigation Consideration Reduction (if any)	
8. Ability to pay reduction (if any)	
9. Reduction for Supplemental Environmental Projects (if any)	
10. Bottom-line Cash Settlement Penalty (Line 6 less lines 7, 8 and 9. Or, if applicable, amount calculated by national municipal litigation consideration in §IV.D.6, less no more than 40% of that amount for appropriate SEPs.)	



"Patrick Adams"
 <psadams@altectesting.com>
 >
 07/30/2008 07:03 PM

To Lorraine Dixon/R6/USEPA/US@EPA
 cc
 bcc

Subject Requested Documents

History: This message has been forwarded.

Lorraine,

Here are the requested documents. I will have to wait to have the certification notarized until I return the week of August 11, 2008. I hope you receive it this time...if not it may be a file size issue and I will break it into a couple of different emails.

Thanks a bunch,

Patrick

Altec Petroleum Group, Inc.

Patrick S. Adams, President

6035 Fremont Street
 Riverside, CA 92504

P (951) 352-6510

F (951) 352-6514

C (951) 377-7823



Wildlife.xlsx



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Certification Letter.pdf



INVOICE 3005

Altec Petroleum Group
323 Co Rd 3460
Pawhuska, OK. 74056

Triple S Oilfield Service, Inc.
710 Leahy Ave.
Pawhuska, OK. 74056
Fax (918)287-2828

09-05-07 Hickey TB - Hooked up lead line & water leg

Truck 8 hrs. @ \$55 per hr. = \$440.00

Poly Welder \$50 per day = \$50.00

Generator 2hrs. @ \$20 per hr. = \$40.00

2 Men 8hrs. @ \$20 per hr. = \$320.00

Day Total = \$850.00

09-06-07 OK Dept, Wildlife #1 - Cleaned up spill ✓

Truck 6 hrs. @ \$55 per hr. = \$330.00

Poly Welder \$50 per day = \$50.00

Generator 1 hr. @ \$20 per hr. = \$20.00

Pit Pump 4 hrs. @ \$15 per hr. = \$45.00

2 Men 6 hrs. @ \$20 per hr. = \$240.00

Day Total = \$685.00

09-07-07 Hickey #5 - Moved pumping unit from yard to well site

Truck 3 hrs. @ \$55 per hr. = \$165.00

3 Men 3 hrs. @ \$20 per hr. = \$60.00

Day Total = \$225.00

09-10-07 The Yard - Unloaded 4.5 in. pipe

Truck 5 hrs. @ \$55 per hr. = \$275.00

3 men 5 hrs. @ \$20 per hr. = \$300.00

Day Total = \$575.00

TOTAL = \$2,335.00

OK
Chris Leahy

Altec Petroleum Group
323 Co. Rd. 3460
Pawhuska, OK. 74056

INVOICE 3010
Triple S Oilfield Service, Inc.
710 Leahy Avenue
Pawhuska, OK. 74056
Fax (918) 287-2828

10-05-07 - Hickey TB Hooked up water leg
Truck 4 hrs. @ \$55 per hr. = \$220.00
3 Men 4 hrs. @ \$20 per hr. = \$240.00
Day Total = \$460.00

10-05-07 - Yard Set pipe racks
Truck 3 hrs. @ \$55 per hr. = \$165.00
2 Men 3 hrs. @ \$20 per hr. = \$120.00
Day Total = \$285.00

10-08-07 - Wildlife 36-1 Sucked out hole ✓
Truck 3 hrs. @ \$55 per hr. = \$165.00
Pit Pump 2 hrs. @ \$15 per hr. = \$30.00
2 Men 3 hrs. @ \$20 per hr. = \$120.00
Day Total = \$315.00

10-10-07 - Wildlife 36-1 Spread gypsum powder & disked into ground ✓
Truck 2 hrs. @ \$55 per hr. = \$110.00
Trailer 2 hrs. @ \$20 per hr. = \$40.00
Tractor 4.5 hrs. @ \$50 per hr. = \$225.00
2 Men 4.5 hrs. @ \$20 per hr. = \$180.00
Day Total = \$555.00

10-11-07 - Yard Brush hogged yard
Day Total = \$300.00

10-15-07 - Wildlife 36-1 Sucked out hole ✓
Truck 3 hrs. @ \$55 per hr. = \$165.00
Pit Pump 2 hrs. @ \$15 per hr. = \$30.00
2 Men 3 hrs. @ \$20 per hr. = \$120.00
Day Total = \$315.00

TOTAL = \$2,230.00

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.



SIGNED: _____

DATE: July 27, 2008

PRINTED NAME: Patrick S. Adams

OFFICE OR TITLE: _____

SWORN AND SUBSCRIBED TO before me, the undersigned Notary Public on this

_____ day of _____, _____.

NOTARY PUBLIC in and for the State of

_____ residing at _____

SEAL

My commission expires _____.



ALTEC. VIEW TOWARD WELL

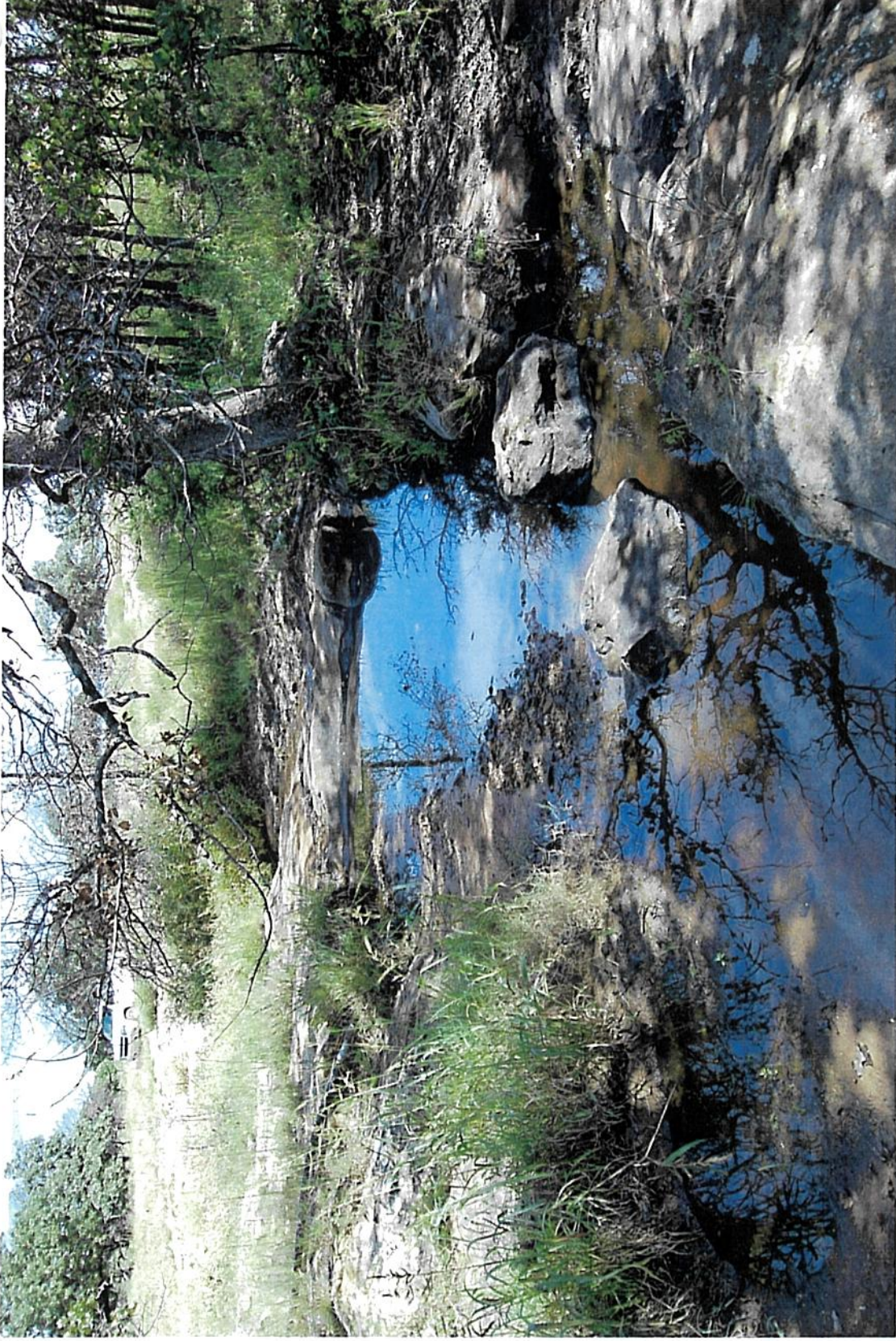
GOVERNMENT
EXHIBIT
27



**ALTEC. VIEW TOWARD SMALL CREEK AND
“NATURAL” HOLE. RUNOFF THIS WAY.**



**ALTEC. NATURAL HOLE. TSS HERE NEXT TO SITE IS
3700 PPM.**



- **ALTEC. REVERSE ANGLE OF PHOTO 3. TRUCK IS PARKED ON OLD DRILLING SITE. RUNOFF ENTERS CREEK AT DEAD TREE IN THE FAR BACKGROUND.**



- **ALTEC. UPPER CREEK RUNNING DOWNHILL TOWARD POND CREEK.**



- **ALTEC. POND CREEK FLOWING WEST. 400 PPM TSS. SMALL FISH, FROGS, ETC. LARGE TREES.**



- **ALTEC. POINT OF ENTRY OF UPPER CREEK TO POND CREEK. NO DAMAGE HERE TO VEGETATION. 400 PPM FLOWING WEST IN POND CREEK.**



- **ALTEC... UPPER CREEK JUST BEFORE STEEP DECENT TO POND CREEK. TSS IS 900 PPM.**