

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF :
:
Western New York Energy, LLC, :
:
: Docket No. CWA-02-2010-3816
Respondent :
:
:

REPORT OF STATUS CONFERENCE AND ORDER

The status teleconference in this matter was held on March 10, 2015. Participating were:

Presiding Officer:	Helen S. Ferrara
Respondent's Attorney:	Adam Schultz
Complainant's Attorney:	Tim Murphy

Introduction: Given the passage of time since the Complaint was filed in this matter and the numerous extensions of time to answer which have been granted by the Undersigned, I scheduled this status conference, directing that the parties' attorneys provide a general update on efforts to resolve this matter.

Status: Mr. Murphy stated that this matter was pending for a long time without significant progress because of some issues in the program office and the fact that the EPA inspector found issues at the site that are outside of the scope of this case. He stated that the EPA inspector will perform a re-inspection in May.

Mr. Schultz stated that he believes all the other issues at the facility have been resolved. He see this as a legal matter rather than a factual matter, but believes that a re-inspection is still a good idea. He states that the tanks are sitting in a double lined manmade depression and believes that what EPA is requesting that Respondent do to achieve compliance is an unrealistic resolution of this matter. Mr. Schultz, emphasizing that the purpose of the regulation at issue is to prevent oil spills from reaching navigable waters, states that when EPA does its calculations, it does not take into account secondary containments like the manmade depression at his client's

site. It appears that Respondent believes that the depression will prevent oil from flowing in to navigable waters, and that while secondary containment can fail, the secondary containment will not fail in this case because it is double lined and "in situ".

Mr. Murphy stated that the EPA inspector believes there are other outstanding issues besides measurements.

Mr. Schultz stated that he believed that EPA has the discretion to consider local conditions at the facility and may acknowledge these conditions in calculating distances necessary for the Respondent to achieve compliance.

The parties agreed that it was in the best interest of all parties to allow the parties additional time to continue settlement negotiations.

IT IS ORDERED:

If a Consent Agreement and Final Order (CAFO) is not filed by June 30, 2015, the parties are hereby directed to file a joint status report by that date summarizing progress made in this case. The undersigned expects that significant progress will have been made towards final resolution of this matter by that time.

Additions or Corrections: The attorneys for the Agency and Respondent may bring errors or omissions in this Report to the attention of the Presiding Officer no later than April 10, 2015, and a corrected report will be issued as appropriate.

Dated: April 1, 2015



Helen S. Ferrara
Presiding Officer
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, N.Y. 10007-1866

CERTIFICATE OF SERVICE

I hereby certify that the **Report of Status Conference and Order** by Regional Judicial Officer Helen Ferrara in the matter of **Western New York Energy, LLC, Docket No. CWA-02-2010-3816**, was served on the parties as indicated below:

First Class Mail - Adam J. Schultz, Esq.
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Karen Maples
Regional Hearing Clerk
USEPA - Region II

Dated: April 2, 2015