



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

SEP 8 2009

FILED
2009 SEP -8 AM 9: 28
REGIONAL HEARING CLERK
EPA REGION VI

CERTIFIED MAIL, RETURN RECEIPT REQUESTED:
7007 0710 0001 9854 8720

Mr. John Mulkey, Owner
Exit Oil & Gas, Inc.
2609 Sagebrush Drive, Suite 208
Flower Mound, Texas 75028

Re: SPCC Administrative Complaint and Opportunity to Request a Hearing
Docket No. **CWA-06-2009-4807**
Foster Haney Lease, Montague County, Texas

Dear Mr. Mulkey:

On June 4, 2008, the Subject facility was inspected by the U.S. Environment Protection Agency (EPA). On January 5, 2009, EPA offered to settle the violations identified during that inspection. Having failed to avail yourself of the Settlement Agreement, we are hereby rescinding the Settlement Agreement, Docket No. **CWA-06-2009-4802**, issued for the above-cited property. Enclosed is the official file stamped copy of the Administrative Complaint and Opportunity to Request a Hearing and Conference (Complaint) which the EPA is issuing to Exit Oil & Gas, Inc. (Respondent) under Docket No. **CWA-06-2009-4807**. The Complaint alleges that Respondent violated Section 311(j), 33 U.S.C. § 1321, of the Clean Water Act (Act) by failing to develop and implement a Spill Prevention Control and Countermeasures (SPCC) Plan in order to comply with regulations promulgated under Section 311(j) of the Act, 33 U.S.C. § 1321(j).

Respondent has the right to a hearing to contest the factual allegations in the Complaint. If Respondent admits the allegations, or the allegations are found to be true after, Respondent has had an opportunity for a hearing, Respondent has the right to contest the penalty proposed in the Complaint. Enclosed is a copy of the procedures that EPA follows in cases of this kind, 40 CFR Part 22, "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits". Please note the requirements for an answer in § 22.15. If Respondent wishes to contest the allegations in the Complaint or the penalty proposed in the Complaint, the company must file a written Answer within thirty (30) days of receipt of the enclosed Complaint.

with the EPA Regional Hearing Clerk at the following address:

Lorena Vaughn
Regional Hearing Clerk (6RC)
U. S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

A copy of the Answer should also be sent to the EPA attorney assigned to the case at the following address:

Ed Quinones (6RC-S)
U. S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

If Respondent does not file an Answer by the applicable deadline (see § 22.15 and 22.16), it will have defaulted. Each allegation in the Complaint will be deemed to be admitted as true by Respondent. Respondent will have waived its right to appear in this action for any purpose and will also have waived its right to be notified of any Agency proceedings that occur before a civil penalty may be imposed. Provided that the Complaint is legally sufficient, the Presiding Officer will then find the company liable for a civil penalty, and a civil penalty of up to a maximum of \$32,500 may be assessed against Respondent for the alleged violations.

If you wish to settle this matter without further legal action, you may also request an informal conference with the Complainant concerning the alleged violations and the amount of the proposed penalty. Respondent has the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA. A request for an informal conference does not extend any deadline in this proceeding, including the deadline by which you must submit an answer to this Complaint.

If you have any questions, or if you wish to schedule an informal settlement conference, please contact Bryant Smalley at (214) 665-7368.

Sincerely,



Mark A. Hansen
Acting, Associate Director
Prevention & Response Branch
Superfund Division

Enclosures (2)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

IN THE MATTER OF

**Exit Oil & Gas, Inc.
Montague County, Texas**

Respondent.

**ADMINISTRATIVE COMPLAINT AND
OPPORTUNITY TO REQUEST A HEARING**

Proceeding to Assess Class I Civil Penalty Under
Clean Water Act Section 311 for SPCC Violations

Docket No. CWA-06-2009-4807

LEGAL AUTHORITY

1. This Administrative Complaint is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(i) of the Clean Water Act ("Act"), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990. The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 6, who has in turn delegated them to the Superfund Division Director of EPA, Region 6, who has, by his concurrence, re-delegated the authority to act as Complainant to the Associate Director Prevention and Response Branch in Region 6, Delegation No. R6-2-51, dated February 13, 2008 ("Complainant").

2. Pursuant to Section 311(b)(6)(B)(i) of the Act, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," codified at 40 CFR Part 22 ("Part 22"), Complainant hereby provides notice of its proposal that the Administrator assess a civil penalty against **Exit Oil & Gas, Inc.**

("Respondent") for failing to comply with Spill Prevention Control and Countermeasure regulations set forth at 40 CFR Part 112 under the authority of Section 311(j) and other provisions of the Clean Water Act, 33 U.S.C. § 1321(j) and §§ 1251 *et seq.* ("SPCC regulations"), and notice of Respondent's opportunity to file an Answer to this Complaint and to request a hearing on the proposed penalty assessment. Subpart I of Part 22 applies to this proceeding.

ALLEGATIONS

3. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore . . . facilities, and to contain such discharges"

4. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA his Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities.

5. EPA subsequently promulgated the Spill Prevention Control & Countermeasure (SPCC) regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, which established certain procedures, methods and requirements upon each owner and operator of a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil

into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as EPA has determined in 40 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States (“harmful quantity”).

6. In promulgating 40 CFR § 110.3, which implements Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), EPA has determined that discharges of harmful quantities include oil discharges that cause either (1) a violation of applicable water quality standards or (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines, or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

7. Respondent is a corporation organized under the laws of Texas with a place of business located at 2609 Sagebrush Drive, Suite 208, Flower Mound, Texas 75028. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 CFR § 112.2.

8. Respondent is the owner within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 CFR § 112.2 of an onshore oil production facility, the Foster-Haney No. 1 Tank Battery, located on the South side of the intersection of Brier Creek Road and Miller Road, Osage Oil Field, Montague County, Texas (“the facility”), drainage travels approximately 900 feet to the West where it enters an unnamed tributary of Brier Creek; thence to Brier Creek; thence to Big Sandy Creek; thence to the West Fork Trinity River.

9. The facility has an aggregate above-ground storage capacity greater than 1320 gallons (approx. 9,140) of oil in containers each with a shell capacity of at least 55 gallons.

10. Big Sandy Creek & the West Fork Trinity River are navigable waters of the United States within the meaning of 40 CFR § 112.2. and Section 502(7) of the Act, 33 U.S.C. § 1362(7).

11. Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products located at the facility.

12. The facility is a non-transportation-related facility within the meaning of 40 CFR § 112.2 Appendix A, as incorporated by reference within 40 CFR § 112.2.

13. The facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 CFR § 112.2.

14. The facility is therefore a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity ("an SPCC-regulated facility").

15. Pursuant to Section 311(j)(1)(C) of the Act, E.O. 12777, and 40 C.F.R. § 112.1 Respondent, as the owner of an SPCC-regulated facility, is subject to the SPCC regulations.

16. The Respondent began operating the facility before August 16, 2002. Facility has been in operation for since at least 1981.

COUNT 1: Failure to prepare a written SPCC plan in accordance with 40 CFR § 112.7 and other applicable section, as required by 40 CFR § 112.3

17. Paragraphs 3 through 16 above are re-alleged as though fully set forth herein.

18. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare a written SPCC plan in accordance with 40 CFR § 112.7 and any other applicable section of 40 CFR Part 112.

19. On June 4, 2008, EPA inspected the facility and found that Respondent had failed to prepare a SPCC plan in accordance with 40 CFR § 112.7, for the facility.

20. Respondent's failure to develop a SPCC plan for the facility violated 40 CFR § 112.3.

21. As alleged in the preceding paragraph, and pursuant to Section 311(b)(6)(B)(i) of the Act and 40 CFR § 19.4, Respondent is liable for civil penalties of up to \$11,000 per violation, up to a maximum of \$32,500.

COUNT 2: Failure to provide Secondary Containment for Bulk Oil Storage Containers as required by 40 CFR § 112.9(c)(2)

22. Paragraphs 3 through 16 above are re-alleged as though fully set forth herein.

23. 40 CFR § 112.9(c)(2) requires that the owner or operator of an SPCC-regulated onshore production facility, provide all tank battery, separation, and treating facility installations with a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation.

24. During the June 4, 2008, inspection, EPA found that Respondent had failed to provide secondary containment for the bulk oil storage containers at the facility.

25. Respondent's failure to provide secondary containment for the bulk oil storage containers at the facility, as described in the preceding Paragraph, violated 40 CFR § 112.9(c)(2).

26. As alleged in the preceding paragraph, and pursuant to Section 311(b)(6)(B)(i) of the Act and 40 CFR § 19.4, Respondent is liable for civil penalties of up to \$11,000 per violation, up to a maximum of \$32,500.

PROPOSED PENALTY

27. Based on the forgoing Allegations, and pursuant to the authority of Section 311(b)(6)(B)(i) of the Act and 40 CFR § 19.4, the Complainant proposes that the Administrator issue a Final Order assessing administrative penalties in the amount of \$22,000. The Complainant bases this proposal on the nature and seriousness of the violations, which undermined the ability of the Respondent to prevent or respond to a worst case spill.

OPPORTUNITY TO REQUEST A HEARING

28. In your answer to this Complaint you may, pursuant to Section 311(b)(6) of the Act and 40 CFR § 22.15(c), request a hearing on any material fact alleged in this Complaint, or on the appropriateness of any penalty it proposes. Even if you do not explicitly request a hearing in your Answer, the Presiding Officer may hold such a hearing if your Answer raises issues appropriate for adjudication. The procedures for any such hearing and for all proceedings in this action are set out in 40 CFR Part 22, a copy of which is enclosed with this Complaint.

29. Default constitutes an admission of all facts alleged in this Complaint and a waiver of your right to a hearing on such factual allegations. In order to avoid default in this matter, you must within 30 days after receipt of this Complaint either (1) settle this matter with the Complainant; (2) file a written statement with the Regional Hearing Clerk at the address provided below that you agree to pay the proposed penalty in this Complaint, and subsequently pay the proposed penalty no later than 60 days after receiving this Complaint, or (3) file both an original and one copy of a written Answer to this Complaint with:

Lorena Vaughn
Regional Hearing Clerk (6RC)
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

30. You are also required, pursuant to § 22.5(b) of the enclosed Consolidated Rules of Practice, to provide a contemporaneous copy of any Answer to the Complainant. Complainant's counsel, who is authorized to receive service on behalf of the Complainant, shall be served at the following address:

Ed Quinones,
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 6 (6RC- S)
1445 Ross Avenue
Dallas, TX 75202-2733

31. Pursuant to 40 CFR § 22.15, your Answer shall clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint with regard to which you have knowledge. If you state in your Answer that you have no knowledge of a particular factual allegation, the allegation shall be deemed denied. Otherwise, your failure to admit, deny, or explain any material factual allegation contained in this Complaint constitutes an admission of the allegation. Your Answer shall also state the circumstances or arguments for any defense you wish to assert, challenges to any factual allegation in the Complaint, and any basis you may have to oppose the Complainant's proposed penalty.

SETTLEMENT

32. If you wish to settle this matter without hearing, you may within 30 days following receipt of this Complaint either: (1) pay the full penalty requested in Paragraph 27, or (2) file a written statement with the Regional Hearing Clerk at the address provided above agreeing to pay, and subsequently pay within 60 days of your receipt of this Complaint, the full penalty requested in Paragraph 27. In either case, your payment shall be made by a cashier's or certified check, or by an electronic funds transfer (EFT). If you are paying by check, pay the check to: "Environmental Protection Agency," noting on the check "OSTLF-311" and docket number **CWA-06-2009-4807**.

- If you use the U.S. Postal Service, address the payment to:

U.S. Environmental Protection Agency, Fines & Penalties
P.O. Box 979077, St. Louis, MO 63197-9000

- If you use a private delivery service, address the payment to:

U.S. Bank
1005 Convention Plaza, Mail Station SL-MO-C2GL
St. Louis, MO 63101

33. You may also request an informal conference with the Complainant concerning the alleged violations and the amount of the proposed penalty. A request for an informal conference does not extend any deadline in this proceeding, including the deadline by which you must submit an Answer to this Complaint.

If you have any questions concerning the settlement process, or wish to arrange for an informal conference, please contact Bryant Smalley at 214-665-7368.

Date: 9-8-9



Mark A. Hansen
Acting Associate Director
Prevention & Response Branch
Superfund Division
U. S. Environmental Protection Agency
Region 6 (6SF-P)
1445 Ross Avenue
Dallas, Texas 75202-2733

CWA-06-2009-4807.

Docket No. CWA-06-2009-4807

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing "Consent Agreement and Final Order," issued pursuant to 40 C.F.R. 22.13(b), was filed on 9 - 8, 2009, with the Regional Hearing Clerk, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202-2733; and that on the same date a copy of the same was sent to the following, in the manner specified below:

Copy by certified mail,
return receipt requested:

NAME: John Mulkey
ADDRESS: 2609 Sagebush Drive Suite 208
Flower Mound, TX 75028



Frankie Markham
OPA Enforcement Administrative Assistant