

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

FILED
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RECORDS SECTION
EPA REGION VI

IN THE MATTER OF § **Docket No. CWA-06-2014-1754**
§
Wapiti Operating, LLC § **Proceeding to Assess a Class I**
§ **Civil Penalty under Section 309(g)**
Respondent § **of the Clean Water Act**
§
Facility No. TXU010996 § **ADMINISTRATIVE COMPLAINT**

**WAPITI OPERATING, LLC'S
ANSWER TO ADMINISTRATIVE COMPLAINT AND
REQUEST FOR HEARING AND CONFERENCE**

Wapiti Operating, LLC ("Respondent") hereby presents its Answer to the above docketed Administrative Complaint to assess a Class I Civil Penalty under Section 309(g) of the Clean Water Act ("Complaint") and requests an informal conference and oral hearing.

I. Statutory Authority

The first unnumbered paragraph in section one of the Complaint states a legal conclusion for which no response is required. To the extent a response might be required, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and on that basis denies them.

Respondent admits that in the second unnumbered paragraph in section one of the Complaint, the EPA is seeking a civil penalty but denies that Respondent has violated the Clean Water Act ("Act") or that the proposed penalty is warranted. Respondent hereafter responds to the numbered paragraphs of the Complaint in correspondingly numbered paragraphs in its answer.

II. Response to Findings of Fact and Conclusions of Law

1. Respondent admits that it is a limited liability company operating under the laws of the State of Texas. Whether Respondent is a “person” as defined in Section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2 is a legal conclusion for which no response is required.

2. Respondent admits that it has owned the Henry Hill SWD facility located in Stephens County, Texas, since June 1, 2013. However, the Complaint does not define the terms “all times relevant to this action” or “all relevant times” so Respondent is without knowledge or information sufficient to form a belief as to whether it has owned the facility during all relevant times. Whether Respondent is an “owner or operator” within the meaning of 40 C.F.R. § 122.2 is a legal conclusion for which no response is required.

3. Respondent denies that the facility was a point source of a discharge of pollutants to Long Branch. Respondent does not have information sufficient to either admit or deny whether the Long Branch constitutes 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, so the allegation is denied.

4. Respondent denies that the facility was a point source of a discharge of pollutants to Long Branch. The remainder of paragraph 4 constitutes a legal conclusion for which no response is required.

5. Paragraph 5 contains statements of law for which no response is required.

6. Respondent admits that the facility was inspected by an EPA field inspector on June 25, 2013. Respondent is without knowledge or information sufficient to form a belief as to what the inspector “observed” or “determined” on the date in question, and on that basis the allegations in Paragraph 6 are denied.

7. Respondent denies the implication in paragraph 7 that there were unauthorized discharges, and the remainder of paragraph 7 of the Complaint states a legal conclusion for which no response is required.

8. Respondent admits that 33 U.S.C. § 13199(g)(2)(A), as modified by 40 C.F.R. § 19.4 sets the maximum penalty not to exceed \$16,000 per day, up to a maximum of \$37,500 for violations after January 12, 2009, however Respondent denies that it is liable for a civil penalty under the facts alleged in this case.

9. Respondent is without knowledge or information sufficient to form a belief as to the factual statements in paragraph 9 of the Complaint, and on that basis the allegations are denied.

10. Respondent is without knowledge or information sufficient to form a belief as to the factual statements in paragraph 10 of the Complaint, and on that basis the allegations are denied. The statement that the EPA will consider comments, if any, filed by the public after the expiration of the notice period is not a factual allegation and, therefore, no response is required.

III. Response to Proposed Penalty

11. Respondent admits that paragraph 11 sets out the amount of the proposed penalty against Respondent as being \$9,800, but Respondent denies that the amount of penalty is justified for the violations as alleged. The actions which precipitated the incident, severe thunderstorms and lightning, were beyond the control of Respondent. The extent and gravity of the alleged violation were minor, Respondent acted quickly and efficiently to remedy the problem and remediate any affected areas. Furthermore, the alleged violation did not result in any economic benefit or savings, nor was the Respondent culpable.

12. Respondent admits that the factors specified in 33 U.S.C. § 1319(g)(3) to be considered in assessing a penalty under § 1319(g) include the nature, circumstances, extent and gravity of the violation, or violations, any prior history of such violations, economic benefit or savings (if any), and the degree of culpability among other factors. Respondent is without knowledge or information sufficient to form a belief as to how the proposed penalty amount was actually determined by the EPA.

13. Paragraph 13 contains legal conclusions for which no response is required.

14. Paragraph 14 states a legal conclusion for which no response is required, however, Respondent would note that as set forth herein, Respondent denies the factual allegations and contests the proposed penalty and has filed this answer within thirty (30) days of service of the Complaint.

15. Paragraph 15 contains legal conclusions for which no response is required.

16. Paragraph 16 contains legal conclusions for which no response is required.

17. Respondent has forwarded this Answer and request for hearing to the Regional Hearing Clerk as set forth in paragraph 17 of the Complaint.

18. Respondent has forwarded this Answer and request for hearing to the EPA attorney assigned to the case set forth in paragraph 18 of the Complaint.

19. The Answer has been signed in compliance with 40 C.F.R. § 22.5 and contains the information required by 40 C.F.R. §§ 22.5 and 22.15, including the name, address and telephone number of Respondent's counsel, listed below, who is authorized to receive service relating to this proceeding.

IV. Request for Hearing

20. Respondent hereby requests a hearing to contest the allegations and the appropriateness of the proposed penalty. The remaining statements in paragraph 20 are legal conclusions for which no response is required.

21. Paragraph 21 contains legal conclusions for which no response is required.

22. Paragraph 22 contains legal conclusions for which no response is required.

23. As discussed in paragraph 23 of the Complaint, Respondent has already begun settlement discussions with the EPA and will continue to pursue the possibility of settlement of the matters set forth in the Complaint.

24. Paragraph 24 sets forth legal conclusions for which no response is required.

25. Paragraph 25 sets forth legal conclusions for which no response is required.

Wherefore, Respondent requests that the Presiding Officer issue a final order that no civil penalty be imposed upon Respondent in this case and dismissing the Complaint with prejudice.

Respectfully submitted,

/s/ Debra Tsuchiyama Baker

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ATTORNEYS FOR WAPITI OPERATING, LLC

CERTIFICATE OF SERVICE

I certify that the foregoing Answer and Request for Hearing was forwarded to the following persons by certified mail, return receipt requested, Overnight Express or Priority Mail, or by commercial delivery service on May 2, 2014:

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

Rusty Herbert (6RC-EW)
U.S. EPA, Region 6
10625 Fallstone Road
Houston, TX 77099

/s/ John Muir
John Muir