

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2014 FEB 18 PM 1:23

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
Samson Oil and Gas USA, Inc.)
1331 17th Street, Suite 710)
Denver, CO 80202)
)
)
)
)
)
Respondent.)

Docket No. **CWA-08-2014-0013**

**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

Proceeding to Assess Class II Civil Penalty
Under Sections 311
of the Clean Water Act

The United States Environmental Protection Agency (EPA) and Samson Oil and Gas USA, Inc., (Respondent), by their undersigned representatives, hereby consent and agree as follows.

AUTHORITY

1. This Combined Complaint and Consent Agreement (Agreement) is issued under the authority vested in the Administrator of the EPA by 311(b)(6)(B)(ii) of the Clean Water Act (the Act), 33 U.S.C. § 1321(b)(6)(B)(ii). The authority to enter into this Agreement has been delegated to the undersigned official.

2. With this Agreement, the parties intend to commence and conclude this matter simultaneously, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

STATEMENTS OF THE PARTIES

3. Respondent consents to the terms of this Agreement, including the assessment of the civil penalty specified below. Nothing herein shall be deemed an admission by Respondent of the allegations, terms, conditions, and/or issues of law or fact in this Agreement, except in an action to enforce this Agreement.

4. For the purpose of any action to enforce this Agreement, the Respondent admits the jurisdictional allegations contained in this Agreement and waives any right to a hearing or appeal before any tribunal to contest any statement of law or fact in this Agreement. The Respondent neither admits nor denies the remainder of the factual and legal allegations below.

5. The EPA takes the position that settlement of this matter is in the public interest.

6. The parties agree that the entry of this Agreement without litigation or adjudication of any issue of fact or law is in their interest and an appropriate means of resolving this matter. The parties reserve any and all rights and defenses they may have against any person or entity not a party to this Agreement.

GENERAL ALLEGATIONS

Oil Discharge Prohibition

7. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits discharging oil into or upon the navigable waters of the United States in such quantities as may be harmful as determined under section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4).

8. For purposes of section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), the EPA has determined, in 40 C.F.R. § 110.3, that a discharge of oil may be harmful to the public health or welfare or the environment of the United States if that discharge (a) violates applicable water quality standards or (b) causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

9. Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), directed the President to make the determination referenced in paragraph 8, above. The President delegated the authority to make this determination to the Administrator of the EPA by Executive Order No. 12777 (56

Fed. Reg. 54757, October 21, 1991) and Executive Order No. 11735 (38 Fed. Reg. 21243, August 7, 1973).

Spill Prevention Control and Countermeasure Requirements

10. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), directed the President to issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from vessels and from onshore and offshore facilities, and to contain such discharges”

11. In response to the directive referenced in paragraph 10, above, the EPA promulgated 40 C.F.R. part 112.

12. A facility subject to 40 C.F.R. part 112 is required to prepare a written SPCC plan and to adhere to the discharge prevention and containment procedures specified in that regulation.

SPECIFIC ALLEGATIONS

13. The Respondent is a corporation organized under the laws of the State of Colorado and authorized to do business in the State of Wyoming.

14. The Respondent is a “person” as defined in sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

15. The Respondent owns and/or operates a “production facility” as defined in 40 C.F.R. § 112.2, including, but not limited to, wells, flow-lines, tank batteries, separation units, and associated piping, in Campbell County, Wyoming. The production facility is known as the Pierce Federal Unit Lease (the Facility).

16. The Respondent states that it acquired ownership and began operating the Facility in 2007.

17. The Respondent is therefore an “owner or operator” of the Facility as defined in section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6).

18. The Respondent is engaged in drilling, producing, gathering, storing, processing, transferring, and/or distributing oil at the Facility.

19. The Facility is an “onshore facility” as defined in section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and a “non-transportation related” facility as defined in 40 C.F.R. § 112.2.

20. The oil referenced in paragraph 18, above, meets the definition of “oil” in 40 C.F.R. § 112.2 and section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

21. When discharged into water, the oil referenced in paragraphs 18 and 20, above, also meets the definition of “pollutant” in section 502(6) of the Act, 33 U.S.C. § 1362(6).

22. The Facility is an oil production lease which consists of oil and produced water storage tanks, a heater treater unit, load out pump, well heads for the producing well and two water injection wells, buried flow lines, and pump house with water injection tanks.

23. Due to its location, the Facility could reasonably be expected to discharge oil and/or other pollutants to Little Piney Creek and Piney Creek and then into the Belle Fourche River and/or their tributaries and/or their adjoining shorelines in quantities that would a) violate applicable water quality standards or (b) cause a film or a sheen upon or discoloration of the surface of the navigable waters of the United States or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of such waters or their adjoining shorelines.

24. Little Piney Creek and Piney Creek are tributaries to the Belle Fourche River.

25. The Belle Fourche River is a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. §§ 110.1 and 112.2.

26. At all relevant times, the Facility has been subject to the SPCC requirements of 40 C.F.R. part 112.

27. On or about February 14 and 15, 2009, Respondent discharged approximately 200 barrels of crude oil and 200 barrels of produced water (salt water) from two 400 barrel storage tanks at the Facility into Little Piney Creek and Piney Creek.

28. The discharge referenced in paragraph 27, above, violated water quality standards, caused a film or sheen upon or discoloration of the surface of the water and/or its adjoining shorelines, and/or caused a sludge or emulsion to be deposited beneath the surface of the water(s) and/or upon the adjoining shorelines of Little Piney Creek and Piney Creek.

29. On or about June 25, 2009, EPA sent Respondent an information request under section 308 of the Act, 33 U.S.C. § 1318, to investigate the discharge referenced in paragraph 27, above.

30. On or about October 7, 2009, EPA determined, following review of information provided by Respondent to the information request referenced in paragraph 29, above, that Respondent's SPCC plan and containment were deficient and therefore in violation of the SPCC requirements of 40 C.F.R. part 112.

31. The Respondent submitted SPCC Plans for the Facility in July 2009; February 2010; and June 2010 in response to EPA notifications that those plans were deficient.

32. EPA sent a Notice of Potential Violations letter to Respondent on October 28, 2013 because of deficiencies that continued to remain uncorrected in the SPCC submittals referenced in paragraph 31, above.

33. Violations of 40 C.F.R. part 112 were identified with the SPCC submittals referenced in paragraph 31, above, which include but were not limited to:

(a) inadequate secondary containment for several of the berms at the Facility, in violation of 40 C.F.R. § 112.9(c)(2);

(b) inadequate flow rate predictions for quantity of oil that could be discharged as a result of each type of reasonably anticipated equipment failure, in violation of 40 C.F.R. § 112.7(b).

(c) failure to include an adequate oil spill contingency plan, in violation of 40 C.F.R. § 112.7(d)(1); failure to discuss specific requirement for drilling and work-over, in violation of 40 C.F.R. § 112.10;

(d) incomplete facility diagram because it did not include intra-facility gathering and underground piping, in violation of 40 C.F.R. § 112.7(a)(3); and

(e) notification phone list was incomplete, in violation of 40 C.F.R. § 112.7(a)(3)(vi).

Enforcement

34. Any person who discharges oil in violation of section 311(b) of the Act, 33 U.S.C. § 1321(b), may be assessed a Class II administrative penalty by the EPA, according to section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii). As adjusted for inflation pursuant to 40 C.F.R. part 19, the maximum penalty is \$16,000 per day for each day during which the violation continues for violations after January 12, 2009 through December 6, 2013, and up to a total maximum of \$177,500.

35. Any person who fails or refuses to comply with any regulation issued under section 311(j) of the Act, 33 U.S.C. § 1321(j), may be assessed a Class II administrative penalty by the EPA, according to section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii). As adjusted for inflation pursuant to 40 C.F.R. part 19, the maximum penalty is \$16,000 per day for

each day during which the violation continues for violations after January 12, 2009 through December 6, 2013, and up to a total maximum of \$177,500.

EPA's Findings of Violation

36. Respondent's discharge of oil described in paragraphs 27 and 28, above, constitutes violations of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), for each day during which the discharge occurred and continued. For such discharge, the Respondent is liable for civil administrative penalties pursuant to section 311(b)(6)(A)(i) of the Act, 33 U.S.C. § 1321(b)(6)(A)(i).

37. Each instance described in paragraphs 33, above, constitutes a violation of section 311(j), 33 U.S.C. § 1321(j), and 40 C.F.R. part 112, for which the Respondent is liable for civil administrative penalties pursuant to section 311(b)(6)(A)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(A)(ii).

Civil Penalty

38. Respondent consents and agrees to pay a civil penalty in the amount of sixty thousand dollars (\$60,000.00) within thirty (30) days of the Final Order issued by the Regional Judicial Officer in this matter incorporating this Agreement.

39. If the due date of the payment falls on a weekend or legal federal holiday, the due date is the next business day. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

40. Payment shall be made by any of the methods set forth in Appendix 1 to this Agreement.

41. At the same time that payment is made, notice that the payment has been made shall be provided to:

Christopher Ajayi
Technical Enforcement Program (Mail Code: 8ENF-UFO)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

and

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

42. If a payment is made by cashiers or certified check, the notice shall include a copy of the check. If a payment is made in any other manner, the notice shall include documentation demonstrating that the payment was made.

43. In the event a payment is not received by the specified due date, interest on the late payment shall accrue from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (e.g., on the 1st late day for the first payment, 30 days of interest accrues).

44. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the date of the Final Order, and each subsequent 30-day period that the initial payment, or any portion thereof, remains unpaid, and a handling charge of fifteen dollars (\$15) shall be assessed on the 1st day after the due date of the payment, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (e.g., the 121st day from the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount.

Further, Respondent shall be subject to the fees, costs, and nonpayment penalty set forth in section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H).

45. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

46. The civil penalty set forth in paragraph 38 of this Agreement was determined by Complainant after taking into account all factors identified in section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), i.e., the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

GENERAL PROVISIONS

47. Nothing in this Agreement shall relieve the Respondent of the duty to comply with the Act and its implementing regulations.

48. Any failure by the Respondent to comply with any term of this Agreement shall constitute a breach of this Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Agreement and for such other relief as may be appropriate.

49. Nothing in this Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of any failure by the Respondent to comply with this Agreement.

50. The undersigned representative of the Respondent certifies that she is fully authorized to enter into the terms and conditions of this Agreement and to bind the Respondent to the terms and conditions of this Agreement.

51. In accordance with 40 C.F.R. § 22.45, the EPA will provide public notice of this action. The EPA may modify or withdraw its consent to this Agreement if comments received disclose new material evidence indicating that this Agreement is inappropriate, improper, or inadequate.

52. If comments received during the public comment period do not require modification of or withdrawal from this Agreement by the EPA, the parties agree to submit this Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

53. Each party shall bear its own costs and attorney fees in connection with this matter.

54. This Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, final and full settlement of the Respondent's liability for federal civil penalties relating to the violations alleged above.

55. This Agreement may be signed in multiple counterparts, each of which shall have the force and effect of the original.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**
Complainant

Date: 02/13, 2014.

for Eddie A. Serra

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202

SAMSON OIL & GAS USA, INC.
Respondent

Date: 6 Feb, 2014.

Robyn Lamont
Robyn Lamont, Chief Financial Officer
and Authorized Representative

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8
1595 Wynkoop Street; Denver, CO 80202-1129**

**PUBLIC NOTICE OF PROPOSED ADMINISTRATIVE PENALTY ASSESSMENT AND
OPPORTUNITY TO COMMENT ON CLEAN WATER ACT (CWA) COMPLAINT**

Action: EPA is providing notice of a Combined Complaint and Consent Agreement with penalty assessment and the opportunity for public comment on the proposed administrative penalty assessment against Samson Oil and Gas USA, Inc. for discharges of oil into waters of the U.S on or about February 14 and 15, 2009.

Summary: EPA is authorized in Class II proceedings under Section 311(b)(6) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(b)(6), to issue orders assessing civil penalties for violations of the CWA and implementing regulations, after providing the person subject to the penalty notice and opportunity for a hearing, and after providing the public with notice of the proposed penalty, opportunity to submit written comments and to participate in a Class II penalty proceeding (hearing), if any. The deadline for submitting public comment is thirty (30) calendar days after issuance of this notice.

On Xxx xx, 2014, EPA filed a Combined Complaint and Consent Agreement pursuant to Section 311(b)(6)(B)(ii) of the Act. Pursuant to Section 311(b)(6)(C) of the CWA, EPA hereby notifies the public of this proposed penalty assessment:

In the matter of: Samson Oil and Gas USA, Inc.
1331 17th Street, Suite 710
Denver, CO 80202

EPA Docket Number: **CWA-08-2014-0013**

Proposed penalty in the Combined Complaint and Consent Agreement: \$60,000.00

Alleged violations: Discharge of approximately 200 barrels of crude oil and 200 barrels of produced water (salt water) from two 400 barrels storage tanks at the facility into the Little Piney Creek and Piney Creek both which flows into the Belle Fourche River, in violation of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

Discharge Location: The Pierce Federal Unit Lease #44-27, located approximately 16.5 miles southeast of Gillette, Campbell County, Wyoming (Latitude: 44 degrees, 6' 21" N; longitude: 105 degrees 14' 40" W, Section: 27 Township: 48N, Range: 70W).

Written comments on the Combined Complaint and Consent Agreement are encouraged and will be accepted at the address listed below for a period of thirty (30) calendar days after the publication of this notice. Written comments submitted by the public as well as information submitted by Samson Oil and Gas USA, Inc. will be available for public review, subject to the provisions of law restricting the disclosure of confidential information. Any person submitting written comments has a right to participate in a hearing, if one is held. The Combined Complaint and Consent Agreement is available for review between 9:00 a.m. and 4:00 p.m. at the address listed below and on the internet at: <http://yosemite.epa.gov/oa/rhc/epaadmin.nsf>.

Submit written comments to: Tina Artemis
Regional Hearing Clerk (8RC);
EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Telephone: (303) 312-6765

FOR FURTHER INFORMATION: Persons wishing to receive a copy of the Combined Complaint and Consent Agreement, or other documents in this proceeding (such as the regulations in 40 C.F.R. part 22, which establish procedures for hearings), or to comment upon the proposed penalty assessment, or any other aspect of the matter, should contact the Regional Hearing Clerk identified above. No action will be taken by EPA to finalize a settlement in this matter until thirty (30) calendar days after this public notice.

Combined Complaint and Consent Agreement - Appendix 1

The following are acceptable payment methods for the civil penalty required to be paid pursuant to the Agreement.

1. If payment is being made by cashier's or certified check, submit the check, bearing the notation "OSTLF-311" and the name and docket number of this case, payable to "Environmental Protection Agency," to:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Federal Express, Airborne, or other commercial carrier:

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

Contact: Natalie Pearson
314-418-4087

2. Wire Transfers:

Wire transfers must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read " D 68010727 Environmental Protection Agency "

3. ACH (also known as REX or remittance express):

ACH payments must indicate the name and docket number of this case and be paid in accordance with the following information:

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank

808 17th Street, NW

Washington, DC 20074

Contact - Jesse White 301-887-6548

ABA = 051036706

Transaction Code 22 - checking

Environmental Protection Agency

Account 310006

CTX Format

4. On-line Payment:

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below:

www.pay.gov

Enter "sfo 1.1" (without the quotation marks) in the "Search Public Forms" field.

Click on the first link to open the form, complete required fields, and then click on "Submit Data" button at bottom of form.