

1 ENVIRONMENTAL PROTECTION AGENCY
 2 REGION 6
 3 IN THE MATTER OF
 4 ALTEC PETROLEUM GROUP, INC.) DOCKET NO. 06-2008-1832
 5 PAWHUSKA, OKLAHOMA)
 6 RESPONDENT)

7 -----
 8 HEARING OF
 9 MATTHEW RUDOLPH
 10 NOVEMBER 16, 2011
 11 -----

16 HEARING OF MATTHEW RUDOLPH, produced as a witness
 17 at the instance of the Agency and duly sworn, was taken
 18 in the above-styled and numbered cause on November 16,
 19 2011, from 9:12 a.m. to 10:49 a.m., before Donna
 20 Trotman, CSR in and for the State of Texas, reported by
 21 machine shorthand, at the Environmental Protection
 22 Agency Office, 1445 Ross Avenue, 13th Floor Hearing
 23 Room, Dallas, Texas, pursuant to the Texas Rules of
 24 Civil Procedure and the provisions stated on the record
 25 or attached hereto.

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1 PROCEEDINGS
 2 THE COURT: Okay. We'll start now. We're
 3 here today for a hearing in the matter of Altec
 4 Petroleum Group, Incorporated, docket number 06-2008-
 5 1832. This is a clean water act section or class one
 6 penalty action. Liability has already been established
 7 in accelerated determination. The purpose of the
 8 hearing today is to take evidence on an appropriate
 9 penalty amount.
 10 The government is represented by
 11 Ms. Lorraine Dixon here today. And Mr. Patrick Adams,
 12 the CEO of Altec Petroleum, is representing Altec.
 13 Ms. Dickson, would you like to make an
 14 opening statement of any sort?
 15 MS. DIXON: Your Honor, before we proceed,
 16 I have a little housekeeping matter in regards to the
 17 original copies.
 18 THE COURT: Please come up here closer so
 19 Mr. Adams can hear you on the speaker phone.
 20 MS. DIXON: Sure. Of course. In regards
 21 to the original copies that I am prepared to offer into
 22 evidence, would you like me to give those to the court
 23 reporter or to you?
 24 THE COURT: Interesting. We can certainly
 25 -- these are going to be exhibits to the transcript?

09:13AM 1 MS. DIXON: Yes.

09:13AM 2 THE COURT: You may give those to the court

09:13AM 3 reporter, file a copy for the record.

09:14AM 4 MS. DIXON: Okay. And I do have a copy for

09:14AM 5 you, Mr. Adams. I will make sure that it gets mailed

09:14AM 6 today.

09:14AM 7 THE COURT: Are these -- are these the same

09:14AM 8 exhibits that were exchanged?

09:14AM 9 MS. DIXON: Yes. But I won't be offering

09:14AM 10 all of them.

09:14AM 11 THE COURT: Okay. I believe that most of

09:14AM 12 them are already in the record in any event.

09:14AM 13 MS. DIXON: Okay. And the other matter is,

09:14AM 14 I need to do a Motion To Amend The Complaint.

09:14AM 15 THE COURT: Proceed.

09:14AM 16 MS. DIXON: Your Honor, at this time, the

09:14AM 17 Complainant would like to make a motion to amend the

09:14AM 18 complaint. The purpose of the motion is to correct a

09:14AM 19 penalty that after the witness reviewed, he found there

09:14AM 20 to be an error and the effort proposed penalty is

09:14AM 21 included in the amended complaint.

09:14AM 22 We do not believe that it will cause

09:14AM 23 prejudicial harm to the Respondent as it is a lower

09:14AM 24 amount. Initially, the proposed penalty was 19,700 --

09:15AM 25 I'm sorry \$500 -- and today we will be seeking a penalty

09:15AM 1 of 14,400.

09:15AM 2 THE COURT: Mr. Adams, do you have any

09:15AM 3 objection to what the penalty of amount being reduced

09:15AM 4 that way?

09:15AM 5 MR. ADAMS: No, sir. I didn't exactly hear

09:15AM 6 all that. I apologize.

09:15AM 7 THE COURT: Oh. Well, let me -- Ms. Dixon

09:15AM 8 just made a motion to reduce the penalty amount that the

09:15AM 9 government is seeking from \$19,500 to \$14,400. It

09:15AM 10 requires consent of the judicial officer to amend the

09:15AM 11 claimant that way in this matter because it will be her

09:15AM 12 second amendment.

09:15AM 13 But she argues that it will not prejudice

09:15AM 14 you, and I think that's pretty persuasive, but do you

09:16AM 15 have any objection to the government seeking a lower

09:16AM 16 penalty against you?

09:16AM 17 MR. ADAMS: No, sir.

09:16AM 18 THE COURT: Okay. Then your motion is

09:16AM 19 granted, Ms. Dixon.

09:16AM 20 MS. DIXON: Thank you.

09:16AM 21 THE COURT: Since Mr. Adams is participating

09:16AM 22 by speakerphone here, be sure to come up here close to

09:16AM 23 the phone so he can hear it all.

09:16AM 24 MS. DIXON: Is it okay for me to stand

09:16AM 25 here?

09:16AM 1 THE COURT: Yes. You can move even further

09:16AM 2 up there if you like.

09:16AM 3 MS. DIXON: Mr. Adams, let me know if you

09:16AM 4 can't hear me.

09:16AM 5 MR. ADAMS: Oh, I hear your great now.

09:16AM 6 Thank you.

09:16AM 7 MS. DIXON: Okay. My name is Lorraine

09:16AM 8 Dixon. I represent the Complainant, the United States

09:16AM 9 Environmental Protection Agency, and I will waive

09:16AM 10 opening statement.

09:16AM 11 THE COURT: All right. Proceed then with

09:16AM 12 your witness, Ms. Dixon.

09:16AM 13 MS. DIXON: Your Honor, at this time, I

09:16AM 14 call up Matthew Rudolph.

09:16AM 15 MATTHEW RUDOLPH,

09:16AM 16 having been first duly sworn, testified as follows:

09:16AM 17 EXAMINATION

09:17AM 18 BY MS. DIXON:

09:17AM 19 Q. Could you state your name for the record?

09:17AM 20 A. **Matthew Thomas Rudolph.**

09:17AM 21 Q. And where are you employed?

09:17AM 22 A. **EPA -- or Environmental Protection Agency,**

09:17AM 23 **Region 6, Dallas, Texas.**

09:17AM 24 Q. And how long have you been with EPA?

09:17AM 25 A. **Approximately 8 1/2 years.**

09:17AM 1 Q. And what does your job duties entail?

09:17AM 2 A. **My job title is as an enforced -- or**

09:17AM 3 **environmental engineer. My job duties would include**

09:17AM 4 **that of an enforcement officer and as an inspector.**

09:17AM 5 THE COURT: Pardon me for interrupting, Ms.

09:17AM 6 Dixon. Mr. Rudolph, if you could just scootch around

09:17AM 7 here, I can probably hear you better than the speaker

09:17AM 8 phone. There you go.

09:17AM 9 Q. (BY MS. DIXON) As part of your job duties, did

09:17AM 10 you have the opportunity to hear about the facility

09:18AM 11 named Altec Petroleum Group, located in Osage County,

09:18AM 12 Oklahoma?

09:18AM 13 A. **Yes.**

09:18AM 14 Q. Do you have personal knowledge of a Section 9

09:18AM 15 -- Section 309(g), Clean Water Act complaint that was

09:18AM 16 filed by EPA against Altec Petroleum Group?

09:18AM 17 A. **Yes.**

09:18AM 18 Q. How so?

09:18AM 19 A. **I was the enforcement officer on that case.**

09:18AM 20 Q. Are you aware of the allegations made in the

09:18AM 21 complaint?

09:18AM 22 A. **Yes.**

09:18AM 23 Q. And what were those allegations?

09:18AM 24 A. **Allegations were Clean Water Act violations,**

09:18AM 25 **the unauthorized discharge of a pollutant, being oil**

09:18AM **1** fill brine, to a -- waters of the U.S.

09:18AM **2** Q. And how many allegations did you make of this

09:18AM **3** particular violation?

09:18AM **4** A. Two.

09:18AM **5** Q. Did you calculate the penalty in the complaint

09:18AM **6** against Altec Petroleum Group?

09:18AM **7** A. Yes.

09:18AM **8** Q. And what is the proposed penalty that EPA is

09:18AM **9** seeking today at this hearing?

09:18AM **10** A. \$14,400.

09:18AM **11** Q. And, Mr. Rudolph, let's take a moment and go

09:18AM **12** through the penalty calculation. Did you use anything

09:19AM **13** to help assist you in calculating the proposed penalty?

09:19AM **14** A. Yes.

09:19AM **15** MS. DIXON: Permission to approach the

09:19AM **16** witness, Your Honor.

09:19AM **17** THE COURT: Certainly. You're going to

09:19AM **18** have to approach him pretty closely just for the speaker

09:19AM **19** phone to pick you up.

09:19AM **20** MS. DIXON: Right.

09:19AM **21** (Exhibit 1 marked.)

09:19AM **22** Q. (BY MS. DIXON) Mr. Rudolph, I'm showing you

09:19AM **23** what has been marked as Government's Exhibit 1. Do you

09:19AM **24** recognize this document?

09:19AM **25** A. Yes.

09:19AM **1** Q. And what is it?

09:19AM **2** A. It's the Clean Water Act Settlement Penalty

09:19AM **3** Policy.

09:19AM **4** Q. How do you recognize this document?

09:19AM **5** A. I've used it.

09:19AM **6** Q. Did you use it in this particular case?

09:19AM **7** A. Yes, I did.

09:19AM **8** Q. And is this a fair and accurate representation

09:19AM **9** of the Clean Water Act Settlement Policy that you used

09:19AM **10** to assess the penalty in this case?

09:19AM **11** A. Yes.

09:19AM **12** MS. DIXON: Your Honor, at this time I

09:19AM **13** offer Exhibit 1 into evidence.

09:19AM **14** THE COURT: Do you have any objection to

09:19AM **15** that, Mr. Adams?

09:19AM **16** MR. ADAMS: No, sir.

09:19AM **17** THE COURT: All right.

09:20AM **18** Q. (BY MS. DIXON) In addition to the Clean Water

09:20AM **19** Act Settlement Policy, you mentioned that you also used

09:20AM **20** Section 309 of the Clean Water Act statute?

09:20AM **21** A. Yes.

09:20AM **22** Q. Does Section 309 of the Clean Water Act have a

09:20AM **23** statutory maximum penalty?

09:20AM **24** A. Yes.

09:20AM **25** Q. Did you calculate a statutory maximum penalty

09:20AM **1** for Altec?

09:20AM **2** A. Yes.

09:20AM **3** Q. And can you tell the Court what that statutory

09:20AM **4** maximum penalty amount is for Altec?

09:20AM **5** A. It is 11,000 per day per violation. For this

09:20AM **6** case, it was \$22,000.

09:20AM **7** Q. Now let's discuss the section 309 Clean Water

09:20AM **8** Act statutory factors individually.

09:20AM **9** Would you please list the eight statutory

09:20AM **10** factors for the Court?

09:20AM **11** A. Nature violation, circumstances, economic

09:20AM **12** benefit, gravity, ability to pay, prior history of

09:20AM **13** violations, degree of culpability.

09:20AM **14** THE REPORTER: I'm sorry.

09:20AM **15** THE WITNESS: Degree of culpability.

09:21AM **16** A. And other matters as justice may require.

09:21AM **17** Q. (BY MS. DIXON) Did you use all of the eight

09:21AM **18** statutory factors to assess a penalty for Altec?

09:21AM **19** A. No.

09:21AM **20** Q. What factors did you use?

09:21AM **21** A. I used three of them. I used the gravity

09:21AM **22** component, I did degree of culpability, and I used the

09:21AM **23** economic benefit.

09:21AM **24** Q. Can you explain to the Court how you calculated

09:21AM **25** the gravity factor for Altec?

09:21AM **1** A. Yes. I followed the guidelines in the Clean

09:21AM **2** Water Act Settlement Penalty Policy, or how they explain

09:21AM **3** the gravity component. Essentially, a monthly gravity

09:21AM **4** component that's considered for each month in which

09:21AM **5** there are one or more violations. And then the total

09:21AM **6** gravity component is you add up all the months.

09:21AM **7** For each month, the gravity component is

09:21AM **8** split up into four different factors: Factor A is

09:22AM **9** significance of violation; factor B is health and

09:22AM **10** environmental harm; factor C is number of effluent

09:22AM **11** limit violations; and factor D is a significance of

09:22AM **12** non-effluent violations.

09:22AM **13** Q. And then -- go ahead. Sorry.

09:22AM **14** A. Each component has a numeric value that you

09:22AM **15** assign to it, and then you add up all those numeric

09:22AM **16** values in a -- in a range -- has a range associated with

09:22AM **17** it. Then you add one to it, you multiply it by 1,000.

09:22AM **18** Q. Did you utilize all four of the components to

09:22AM **19** assess a penalty for the gravity factor in Altec's case?

09:22AM **20** A. No. I just looked at two components.

09:22AM **21** Q. And which components were those?

09:22AM **22** Q. B and D?

09:22AM **23** Q. Okay. Mr. Rudolph, starting with component B,

09:22AM **24** health and environmental harm, can you explain this

09:22AM **25** component to the Court?

09:22AM 1 **A. Yes. It's a -- a value for this factor has a**

09:23AM 2 **range from 0 to 50. You select this factor based on --**

09:23AM 3 **on violations that present actual or potential harm to**

09:23AM 4 **the environment or to human health.**

09:23AM 5 **Q.** And let's discuss this component in terms of

09:23AM 6 Altec. Can you tell the Court where exactly this

09:23AM 7 release occurred?

09:23AM 8 **A. It was on a drilling site located up in Osage**

09:23AM 9 **County, Oklahoma. The drilling site was located on a**

09:23AM 10 **wildlife management area.**

09:23AM 11 **Q.** And why is a wildlife management area in

09:23AM 12 significance in this case?

09:23AM 13 **A. An area dedicated to protecting the**

09:23AM 14 **environment, dedicated to protecting animals.**

09:23AM 15 **Q.** And what, if any, is the threat of a brine

09:23AM 16 release at a wild life management area?

09:24AM 17 **A. Oh, it could impact it severely.**

09:24AM 18 **Q.** How so?

09:24AM 19 **A. Brine is very high in salt. It's very toxic to**

09:24AM 20 **any type of fresh water environment.**

09:24AM 21 MS. DIXON: Your Honor, at this time, I am

09:24AM 22 showing Mr. Rudolph Government Exhibit No. 2.

09:24AM 23 (Exhibit 2 marked.)

09:24AM 24 **Q.** (BY MS. DIXON) Mr. Rudolph, could you take a

09:24AM 25 look at this document. Do you recognize this document?

09:24AM 1 **A. Yes.**

09:24AM 2 **Q.** And can you tell the Court what it is?

09:24AM 3 **A. It is an inspection report produced by our**

09:24AM 4 **field inspector, Kent Sanborn, from an inspection dated**

09:24AM 5 **September 21st, 2007.**

09:24AM 6 **Q.** And is this a fair and accurate

09:24AM 7 representation -- I'm sorry.

09:24AM 8 Did you use utilize this inspection report

09:24AM 9 in assessing a penalty against Altec?

09:24AM 10 **A. Yes, I did.**

09:24AM 11 **Q.** And is this a fair and accurate representation

09:24AM 12 of the October 2007 -- I'm sorry -- the September 2007

09:25AM 13 inspection report that you used to assess the penalty in

09:25AM 14 this case?

09:25AM 15 **A. Yes.**

09:25AM 16 MS. DIXON: Your Honor, at this time, I

09:25AM 17 offer Government's Exhibit 2 into evidence.

09:25AM 18 THE COURT: Any objection to that, Mr.

09:25AM 19 Adams?

09:25AM 20 MR. ADAMS: No.

09:25AM 21 THE COURT: Okay, without objection.

09:25AM 22 **Q.** (BY MS. DIXON) Was there evidence of a brine

09:25AM 23 release at the wildlife management area, Mr. Rudolph?

09:25AM 24 **A. Yes.**

09:25AM 25 **Q.** And where exactly did this release occur at the

09:25AM 1 wildlife management area?

09:25AM 2 **A. It occurred and went to a creek.**

09:25AM 3 **Q.** Was there evidence of a release of brine

09:25AM 4 anywhere else in the wildlife management area?

09:25AM 5 **A. No.**

09:25AM 6 **Q.** Was there brine -- evidence of brine anywhere

09:25AM 7 else at the wildlife management area?

09:26AM 8 **A. Off-site?**

09:26AM 9 **Q.** On-site.

09:26AM 10 **A. Yeah. There was evidence all over the site.**

09:26AM 11 **Q.** Okay. Was there any evidence of the

09:26AM 12 concentration of brine that had been released into the

09:26AM 13 -- the creek?

09:26AM 14 **A. Yes.**

09:26AM 15 **Q.** And can you tell the Court the concentration

09:26AM 16 found in the creek according to the September 2007

09:26AM 17 inspection report?

09:26AM 18 **A. 30,000 parts per million total soluble salts.**

09:26AM 19 THE REPORTER: I'm sorry. Can you repeat?

09:26AM 20 THE WITNESS: 30,000 parts per million

09:26AM 21 total soluble salts.

09:26AM 22 MS. DIXON: Your Honor, at this time, I am

09:26AM 23 showing the Respondent [sic] Government Exhibit 3.

09:26AM 24 (Exhibit 3 marked.)

09:26AM 25 **Q.** (BY MS. DIXON) Mr. Rudolph, can you take a

09:26AM 1 look at this exhibit? Do you recognize this document?

09:26AM 2 **A. Yes.**

09:26AM 3 **Q.** And what is it?

09:26AM 4 **A. Ambient water quality criteria for chloride.**

09:26AM 5 **Q.** How did you recognize this document?

09:26AM 6 **A. I referenced it.**

09:26AM 7 **Q.** In?

09:26AM 8 **A. In doing research, as far as determining the**

09:27AM 9 **effects salt has on aquatic life.**

09:27AM 10 **Q.** And did you utilize this report in your

09:27AM 11 analysis of a penalty for Altec?

09:27AM 12 **A. Yes.**

09:27AM 13 **Q.** And is this a fair and accurate representation

09:27AM 14 of the ambient water quality criteria for chloride 1988?

09:27AM 15 **A. Yes.**

09:27AM 16 MS. DIXON: Your Honor, at this time, may I

09:27AM 17 offer Government Exhibit 3 into evidence?

09:27AM 18 THE COURT: Mr. Adams, any objection?

09:27AM 19 MR. ADAMS: Ma'am, what's the title of that

09:27AM 20 document?

09:27AM 21 MS. DIXON: Ambient Water Quality Criteria

09:27AM 22 for Chloride - 1988. It is an EPA document.

09:27AM 23 MR. ADAMS: Okay. Yes, that's fine.

09:27AM 24 THE COURT: Yes. These documents are

09:27AM 25 already in the record in any event, but it's admitted

09:27AM 1 again.

09:27AM 2 Q. (BY MR. DIXON) Mr. Rudolph, based upon this

09:28AM 3 report, what is the significance of the concentration of

09:28AM 4 brine that was released into the creek by Respondent?

09:28AM 5 A. Well, it was much higher -- it was much higher

09:28AM 6 than what should be allowed.

09:28AM 7 Q. And what is the allowable amount?

09:28AM 8 A. According to this, there is a -- information in

09:28AM 9 it that would indicate levels as low as 230 parts per

09:28AM 10 million of total dissolved salts, would be -- would have

09:28AM 11 a toxic -- basically, a chronic, toxic effect on fresh

09:28AM 12 water fish.

09:28AM 13 Q. Are there animals in the Wildlife Management

09:28AM 14 area?

09:28AM 15 A. Yes.

09:28AM 16 Q. And what what kind of animals are out there?

09:28AM 17 A. There's deer, there's turkey, there's rabbits,

09:28AM 18 coyotes, foxes, squirrels, that type of thing.

09:28AM 19 Q. And how could a release of this magnitude

09:29AM 20 affect them?

09:29AM 21 A. Well, if they were to drink that water that was

09:29AM 22 contaminated, they could also become harmed or possibly

09:29AM 23 killed.

09:29AM 24 Q. What range, if any, did you assess against

09:29AM 25 Altec for this component?

09:29AM 1 A. Well, for the September 21st, 2007, violation,

09:29AM 2 I assessed the value of 4 out of the 0 to 50.

09:29AM 3 Q. And why did you choose a range of 4?

09:29AM 4 A. Well, I feel it's -- it's fairly low, but

09:29AM 5 something needed to be assessed here because of the

09:29AM 6 toxic effect salt has on a fresh water environment --

09:29AM 7 Q. And was there --

09:29AM 8 A. -- aquatic environment.

09:29AM 9 Q. I'm sorry. Was there can actual harm to the

09:29AM 10 environment based upon your observations?

09:29AM 11 A. There were some dead vegetation around the

09:29AM 12 facility.

09:29AM 13 Q. Mr. Rudolph, based upon your 8 1/2 years of

09:29AM 14 experience as an investigator and enforcement officer,

09:30AM 15 could you have assessed a higher range for this

09:30AM 16 component?

09:30AM 17 A. Yes.

09:30AM 18 Q. And let's discuss the March '08 inspection.

09:30AM 19 Did you also assess a -- a range for Altec for this

09:30AM 20 component?

09:30AM 21 A. Yes.

09:30AM 22 Q. And what was that range?

09:30AM 23 A. A 4 also.

09:30AM 24 Q. And could you explain to the Court why you

09:30AM 25 chose a 4 for that penalty?

09:30AM 1 A. Well, it's the same thing. Evidence showed

09:30AM 2 that salt water had been discharged from the facility

09:30AM 3 and into a creek, to a water body, that was clarified as

09:30AM 4 waters of the U.S., and I basically give it the same

09:30AM 5 value.

09:30AM 6 Q. Before we move on, Mr. Rudolph, I would like to

09:30AM 7 take a moment and discuss air drilling. Are you

09:30AM 8 familiar with air drilling?

09:30AM 9 A. Yes.

09:30AM 10 Q. How so?

09:30AM 11 A. Oh, from prior work experiences.

09:30AM 12 Q. Mr. Rudolph, does air drilling produce brine?

09:30AM 13 A. Yes.

09:30AM 14 Q. And could you explain to the Court how?

09:31AM 15 A. Well, any fluids that would hold, or any drill

09:31AM 16 cuttings for that matter that are high in salts that are

09:31AM 17 circulated up to the surface, could be considered oil

09:31AM 18 fill brine.

09:31AM 19 Q. Okay. Let's discuss component D, the number of

09:31AM 20 non-effluent limit violation. Can you explain this

09:31AM 21 component to the Court?

09:31AM 22 A. Yes. It has to do with the severity and the

09:31AM 23 number of non-effluent limit violations. It's basically

09:31AM 24 for unpermitted discharges, and consists of six

09:31AM 25 different non-effluent limit violations that you would

09:31AM 1 choose from.

09:31AM 2 The six are, if I can remember, monetary

09:31AM 3 reporting, pretreatment, sludge handling, unauthorized

09:31AM 4 discharges, other non-effluent limit violations, and

09:32AM 5 permanent milestone schedules.

09:32AM 6 Q. Did you consider all of those factors in

09:32AM 7 assessing a penalty against Altec for this component?

09:32AM 8 A. No.

09:32AM 9 Q. What did you consider?

09:32AM 10 A. I just considered one factor for the

09:32AM 11 unauthorized discharge.

09:32AM 12 Q. Okay. What range, if any, did you assess

09:32AM 13 against Altec for this component?

09:32AM 14 A. I gave it a 1.

09:32AM 15 MS. DIXON: Your Honor, at this time,

09:32AM 16 Complainant seeks the Court's permission to allow the

09:32AM 17 witness to leave the witness stand and approach the

09:32AM 18 easel for demonstrative purposes.

09:32AM 19 THE COURT: Certainly. While he's putting

09:32AM 20 stuff up there, though, could you describe it for the

09:32AM 21 benefit of Mr. Adams, Ms. Dixon?

09:32AM 22 MS. DIXON: Okay.

09:32AM 23 THE COURT: Maybe it would work better if

09:32AM 24 you came around to this side.

09:32AM 25 MS. DIXON: Okay.

09:32AM 1 Mr. Adams, this is the monthly gravity
 09:32AM 2 component that Matt developed. If you look in your --
 09:33AM 3 your -- if you have your notebook with you that I sent
 09:33AM 4 you, it is Government Exhibit -- let me check -- it
 09:33AM 5 would have been Government Exhibit 13. Okay?
 09:33AM 6 MR. ADAMS: Okay.
 09:33AM 7 MS. DIXON: And it is the components A, B,
 09:33AM 8 C, D, as well as the total -- and then he gives a total
 09:33AM 9 monthly gravity component, and then he shows a
 09:33AM 10 calculation that he does for the 9-17-07 alleged
 09:33AM 11 violation and the March 10th, '08 alleged violation.
 09:33AM 12 MR. ADAMS: Okay.
 09:33AM 13 THE WITNESS: Shall I explain?
 09:33AM 14 MS. DIXON: Yes, please.
 09:33AM 15 **A. As I previously stated, the monthly gravity**
 09:33AM 16 **component calculated for each month, which there is one**
 09:33AM 17 **or more violations, basically consists of four different**
 09:33AM 18 **factors, A, B, C and D.**
 09:34AM 19 **And each factor has a numeric range you**
 09:34AM 20 **want to chose from. So for factor A, significance of**
 09:34AM 21 **violation, has a range from 0 to 20. Factor B, health**
 09:34AM 22 **and environmental harm has a factor from 0 to 50.**
 09:34AM 23 **Factor C, number of effluent violations, has a factor**
 09:34AM 24 **from 0 to 5. And factor D, significance of non-effluent**
 09:34AM 25 **violations has range from 0 to 70.**

09:34AM 1 **And then once you have -- once you**
 09:34AM 2 **calculate each monthly gravity component for each**
 09:34AM 3 **violation or violations, you add them together, you add**
 09:34AM 4 **one to it, and you multiply by a thousand. And then**
 09:34AM 5 **your total monthly gravity component is the summation of**
 09:34AM 6 **all the monthly gravity components.**
 09:34AM 7 **Q. Okay. Mr. Rudolph, for nine -- for the**
 09:35AM 8 **inspection and the violation that we allege occurred in**
 09:35AM 9 **September of '07, could you walk the Court through that,**
 09:35AM 10 **using only the components that you considered?**
 09:35AM 11 **A. A and C I didn't consider, because those have**
 09:35AM 12 **to do with, I believe, permitted violations. So I gave**
 09:35AM 13 **that a 0 for both those factors. B, dealing with health**
 09:35AM 14 **and environmental harm, I felt brine is very toxic to**
 09:35AM 15 **any aquatic fresh water environment, I chose a value of**
 09:35AM 16 **4.**
 09:35AM 17 **And then for D, for the unauthorized**
 09:35AM 18 **discharges, I had a value of 1. Now what you do is you**
 09:35AM 19 **add one to that, you multiply by a thousand, and that's**
 09:35AM 20 **your amount as far as monetary amount. So that's**
 09:35AM 21 **\$6,000.**
 09:35AM 22 MS. DIXON: Mr. Adams, could you hear that?
 09:36AM 23 MR. ADAMS: Yes.
 09:36AM 24 **Q. Okay. And could you do the same thing for the**
 09:36AM 25 **March '08 inspection?**

09:36AM 1 **A. I basically did the same thing. For A and C, I**
 09:36AM 2 **gave it a 0.**
 09:36AM 3 (Fire alarm going off.)
 09:36AM 4 THE COURT: Mr. Adams, we're going to have
 09:36AM 5 to recess this for a minute. Can you -- will you be by
 09:36AM 6 the phone in about 15 to 20 minutes?
 09:36AM 7 MR. ADAMS: Yes, sir.
 09:36AM 8 THE COURT: We're apparently having a fire
 09:36AM 9 drill.
 09:36AM 10 MR. ADAMS: Well --
 09:36AM 11 THE COURT: We'll get back to you.
 09:36AM 12 MR. ADAMS: Enjoy that. I'll be there.
 09:36AM 13 THE COURT: Okay. We'll call you right
 09:36AM 14 back. We're going into recess for a minute.
 09:36AM 15 (Break taken from 9:36 a.m. to 9:50 a.m.)
 09:50AM 16 THE COURT: Mr. Adams, our fire drill is
 09:51AM 17 over and everybody is reassembled here. I'll let Mr.
 09:51AM 18 Rudolph take the witness chair again and we will
 09:51AM 19 proceed.
 09:51AM 20 Recess has ended.
 09:51AM 21 **A. As I was explaining with the March 10th, 2008**
 09:51AM 22 **violation, the monthly gravity component calculation for**
 09:51AM 23 **A and C -- factors A and C, I gave that a value of 0. I**
 09:51AM 24 **felt that had to do with permitted violations, and**
 09:51AM 25 **clearly here in this case, there was an unpermitted,**

09:51AM 1 **unauthorized discharge. I did apply values B and D also**
 09:51AM 2 **for this monthly gravity component.**
 09:51AM 3 **For B, I also gave it a 4, based on the**
 09:52AM 4 **salinity levels that were observed in the creek at the**
 09:52AM 5 **time of inspection. And for factor D, I also gave that**
 09:52AM 6 **a 1 for the unauthorized discharge. And you want to**
 09:52AM 7 **add -- add these together also, add one to it, multiply**
 09:52AM 8 **by a thousand, \$1,000. For this one, you get \$6,000**
 09:52AM 9 **also.**
 09:52AM 10 **Q. (BY MS. DIXON) Mr. Rudolph, you may take your**
 09:52AM 11 **seat.**
 09:52AM 12 **A. And then you want to add both the monthly**
 09:52AM 13 **gravity components to get the total monthly gravity**
 09:52AM 14 **component, which is 12,000.**
 09:52AM 15 **Q. Thank you. At this time, let's discuss the**
 09:52AM 16 **degree of culpability factor, Mr. Rudolph. Can you**
 09:53AM 17 **explain this factor to the Court?**
 09:53AM 18 **A. It has to do with holding the Respondent or the**
 09:53AM 19 **alleged violator responsible for the violation.**
 09:53AM 20 **Q. And did the Respondent make any efforts to**
 09:53AM 21 **clean up the pit?**
 09:53AM 22 **A. He made some efforts to clean up the site.**
 09:53AM 23 **Q. And what did he do?**
 09:53AM 24 **A. He bag filled in the pits, and I believe it was**
 09:53AM 25 **noted that he had brought out gypsum and spread it over**

09:53AM **1 the surface.**

09:53AM **2 Q.** And was this satisfactory to EPA?

09:53AM **3 A. No.**

09:53AM **4 Q.** Can you explain to the Court why not?

09:53AM **5 A. It appears the site continued to discharge**

09:53AM **6 brine.**

09:53AM **7 Q.** And what, if anything, did the Respondent do to

09:53AM **8 make any efforts to remediate the creek? Do you have**

09:53AM **9 any knowledge of that?**

09:53AM **10 A. No. I don't have any knowledge.**

09:53AM **11 Q.** Mr. Rudolph, in assessing your penalty, did you

09:53AM **12 take into consideration Altec's attempts to remediate**

09:54AM **13 the pit?**

09:54AM **14 A. Yes.**

09:54AM **15 Q.** Mr. Rudolph, according to the March 2008

09:54AM **16 inspection report, what was the concentration of brine**

09:54AM **17 released in the creek?**

09:54AM **18 A. Could you repeat that, please?**

09:54AM **19 Q.** According to the March 2008 inspection report,

09:54AM **20 what was the concentration of brine released in the**

09:54AM **21 creek?**

09:54AM **22 A. I believe as high as 6,700.**

09:54AM **23 Q.** And what, if anything, did that indicate to

09:54AM **24 you?**

09:54AM **25 A. Well, that discharge continued from the site.**

09:54AM **1 Q.** Mr. Rudolph, did EPA take any samples

09:54AM **2 upgradient of the creek?**

09:54AM **3 A. No.**

09:54AM **4 Q.** Can you explain to the Court why?

09:54AM **5 A. Couldn't find any water. It appeared that**

09:54AM **6 where we did measure salinity, basically, the point of**

09:54AM **7 the entry of the creek was at the head waters of that**

09:54AM **8 creek.**

09:54AM **9 Q.** And did EPA conduct samples downgradient of the

09:55AM **10 creek?**

09:55AM **11 A. Yes.**

09:55AM **12 Q.** And what did EPA find?

09:55AM **13 A. Well, on the September 17th, 2007 inspection, I**

09:55AM **14 believe it was 2,500 parts per million.**

09:55AM **15 Q.** Mr. Rudolph, what was the Respondent's attitude

09:55AM **16 in cleaning up the pit?**

09:55AM **17 A. He felt -- I don't know. Repeat that.**

09:55AM **18 Q.** Based upon your observation -- let me ask this.

09:55AM **19 Did you have any conversations with -- with the**

09:55AM **20 Respondent regarding cleaning up the pit?**

09:55AM **21 A. Yes.**

09:55AM **22 Q.** And what -- what did he say?

09:55AM **23 A. I can't recall.**

09:55AM **24 Q.** Okay.

09:55AM **25 MS DIXON: Your Honor, at this time, the**

09:55AM **1 Complainant seeks the Court's permission to allow the**

09:55AM **2 witness to leave the witness stand and approach the**

09:55AM **3 easel for demonstrative evidence purposes only.**

09:55AM **4 THE COURT: Once again, let's describe it**

09:55AM **5 verbally as we go along so Mr. Adams can follow it.**

09:55AM **6 MS. DIXON: Okay. Go ahead, Matt, and make**

09:56AM **7 sure you speak loudly so --**

09:56AM **8 A. Am I supposed to be doing the degree of**

09:56AM **9 culpability calculations?**

09:56AM **10 Q.** (BY MS. DIXON) Yes. Yes.

09:56AM **11 A. Well, basically, I just took the total monthly**

09:56AM **12 gravity component, and multiplied it by 20 percent.**

09:56AM **13 Q.** How did you reach the 20 percent?

09:56AM **14 A. I assessed 10 percent each monthly gravity**

09:56AM **15 component.**

09:56AM **16 Q.** And why did you choose 10 percent?

09:56AM **17 A. I just felt it was a good number.**

09:56AM **18 Q.** What -- what was the range that you could have

09:56AM **19 considered?**

09:56AM **20 A. I don't think -- I don't believe there is a**

09:56AM **21 range for this.**

09:56AM **22 Q.** Okay.

09:56AM **23 A. Anyway, I did it, and I got \$2,400 for**

09:56AM **24 culpability -- degree of culpability.**

09:56AM **25 Q.** And how did you get 2,400 again?

09:56AM **1 A. Multiply the 12,000 by 20 percent.**

09:56AM **2 Q.** And what was the total amount of the assessed

09:56AM **3 penalty for the degree of culpability factor?**

09:57AM **4 A. \$2,400.**

09:57AM **5 Q.** And can you -- did EPA -- did EPA fine or note

09:57AM **6 any other off-site sources that could have contaminated**

09:57AM **7 the -- the creek with the brine?**

09:57AM **8 A. No.**

09:57AM **9 Q.** Mr. Rudolph, were there any other factors that

09:57AM **10 you considered in computing a penalty for Altec?**

09:57AM **11 A. I did look -- I did look at the economic**

09:57AM **12 benefit factor.**

09:57AM **13 Q.** Mr. Rudolph, I'm sorry. Let me let you take

09:57AM **14 your seat again. Can you tell the Court what the one**

09:57AM **15 remaining factor is again?**

09:57AM **16 A. Economic benefit.**

09:57AM **17 Q.** And are you assessing a penalty for this factor

09:57AM **18 today at hearing?**

09:57AM **19 A. No, I'm not.**

09:57AM **20 Q.** One final question, Mr. Rudolph. What is the

09:57AM **21 total proposed penalty amount that EPA is seeking today?**

09:57AM **22 A. \$14,400.**

09:58AM **23 MS. DIXON: Pass the witness, Your Honor.**

09:58AM **24 THE COURT: Mr. Adams, you may now question**

09:58AM **25 Mr. Rudolph if you -- if you wish.**

09:58AM 1 MR. ADAMS: Okay.

09:58AM 2 EXAMINATION

09:58AM 3 BY MR. ADAMS:

09:58AM 4 Q. Well, Mr. Rudolph, I have a couple of questions

09:58AM 5 regarding number one, the EPA's determination to not do

09:58AM 6 any type of upgradient sampling to the creek,

09:58AM 7 considering you based this on the fact that was the head

09:58AM 8 water start of the creek.

09:58AM 9 Have you actually seen the site?

09:58AM 10 A. No. I have not. Well, I haven't walked out

09:58AM 11 there in person. I have seen it through photos.

09:58AM 12 Q. Okay. The photos that are presented to me or

09:58AM 13 better photos?

09:58AM 14 A. I had photos that Kent Sanborn had done. And I

09:58AM 15 also had photos from the state biologist with the

09:58AM 16 Oklahoma Department of Wildlife Conservation. He also

09:58AM 17 had photos of the site.

09:59AM 18 Q. Okay. Did you see the photos that I forwarded

09:59AM 19 to you and to Ms. Dixon, four or five of them, being

09:59AM 20 actual aerial photos of the entire site?

09:59AM 21 A. I don't know.

09:59AM 22 Q. So they weren't -- none of those you don't

09:59AM 23 recall seeing those where all of the trees are green,

09:59AM 24 the inadequate job that we did restoring the site, that

09:59AM 25 there's grass growing, that everything looks actually

09:59AM 1 better than when we started?

09:59AM 2 A. Oh, yes. I haven't seen --

09:59AM 3 Q. Did you see that photo?

09:59AM 4 A. No, I have not. No, sir.

09:59AM 5 Q. Well, it would have been good for -- because

09:59AM 6 they were forwarded to you, and they were forwarded to

10:00AM 7 Ms. Dixon at the same time.

10:00AM 8 Are you -- are you familiar with how much

10:00AM 9 rain occurred --

10:00AM 10 A. No.

10:00AM 11 Q. -- in Oklahoma in October, September, October.

10:00AM 12 Well, even beginning in August of 2007.

10:00AM 13 A. No, I'm not.

10:00AM 14 Q. Do you realize that the day in question that

10:00AM 15 the state biologist brought up that we had a leaking

10:00AM 16 containment pit, that there were over 7 1/2 inches of

10:00AM 17 rain in four hours that flooded the entire area?

10:00AM 18 Did anybody show you the photos of the rain

10:00AM 19 events with you, where water a quarter of a mile wide

10:00AM 20 was passing across our site from upgradient locations?

10:00AM 21 A. No. I don't believe I've seen those photos.

10:01AM 22 Q. Okay. Well, would those -- would those have

10:01AM 23 had a bearing on your decision?

10:01AM 24 A. No.

10:01AM 25 Q. Okay. And what about the -- in here where you

10:01AM 1 list the -- in the complaint that we spent \$985 for

10:01AM 2 remediating the problem?

10:01AM 3 A. Can you repeat -- repeat that, please?

10:01AM 4 Q. And let me get to the -- to the page where you

10:01AM 5 factored -- I apologize guys, it's hard working out of a

10:01AM 6 pickup here -- that you made reference to the fact that

10:01AM 7 we had spent 685, 980 -- not even \$685 in an effort to

10:02AM 8 correct the problem.

10:02AM 9 A. Did I take that into consideration? No, not

10:02AM 10 really. I -- I didn't feel like that that had any

10:02AM 11 relevance.

10:02AM 12 Q. And I was just curious why you reference \$685

10:02AM 13 when we submitted over \$23,000 in invoices. And do you

10:02AM 14 recall when I submitted those invoices what your

10:02AM 15 statement was to me?

10:02AM 16 A. Yes. I do recall when you had submitted some

10:02AM 17 invoices. I believe there was --

10:02AM 18 Q. Do you recall what your statement was to me?

10:02AM 19 A. No. I do not. On which date?

10:02AM 20 Q. The fact that -- that you basically called me a

10:02AM 21 liar saying I fabricated the invoices?

10:02AM 22 A. No. I do not.

10:02AM 23 Q. Do you recall that?

10:02AM 24 A. I do not recall that.

10:02AM 25 Q. Okay. Well, there was over \$23,000 spent

10:03AM 1 pumping out the creek, and you did have copies of those

10:03AM 2 invoices. I'm not sure why you chose to list \$685

10:03AM 3 instead of 23,000.

10:03AM 4 A. I -- I can't -- I don't know.

10:03AM 5 Q. Especially when you have the invoices in your

10:03AM 6 hand. And the fact that we're referencing dead

10:03AM 7 vegetation in October, when their deciduous trees that

10:03AM 8 begin losing their leaves in September, October.

10:03AM 9 And so I sent you aerial photos showing you

10:03AM 10 that all of the trees were perfect. I explained to you

10:03AM 11 that great care was taken meeting with the Department of

10:04AM 12 Wildlife, picking this site in particular, handling the

10:04AM 13 trees exactly how they requested them to be handled.

10:04AM 14 The exact orientation of the site, the size of the site.

10:04AM 15 When we did the remediation effort with the gypsum, do

10:04AM 16 you remember what you said?

10:04AM 17 A. No. I do not.

10:04AM 18 Q. You said, hey, you know, when we were talking

10:04AM 19 incorporate gypsum into the site, I wasn't talking about

10:04AM 20 bringing a damn 50-pound bag of gypsum and throwing it

10:04AM 21 around and calling it good. And I said to you, I said,

10:04AM 22 do you see the receipts, Mr. Rudolph? We actually

10:04AM 23 brought in a few semiloads, and we actually incorporated

10:04AM 24 it into the site down six inches below with the rippers

10:04AM 25 on a bulldozer.

10:05AM 1 A. Thank God. Thank you. I think if I may -- I
10:05AM 2 don't mean to interrupt, but this penalty doesn't even
10:05AM 3 take that into consideration. It just considers the two
10:05AM 4 unauthorized discharges. It really doesn't --

5 Q. Well, I know. But now when we're talking
6 about --

7 A. -- take --

8 THE REPORTER: I can only get one at a
9 time.

10:05AM 10 Q. (BY MR. ADAMS) -- the unauthorized discharge,
10:05AM 11 we're assuming that everything came from my site, but
10:05AM 12 you did nothing ungradient when we had a wall of water
10:05AM 13 passing over our site, coming from upgradient sources,
10:05AM 14 and you chose -- the inspector chose mypucalopsis
10:05AM 15 [phonetic] an example of upgradient --

10:05AM 16 A. Yeah.

10:05AM 17 Q. -- which would greatly effect our site, would
10:05AM 18 it not?

10:05AM 19 A. According to our inspector, he did not note any
10:05AM 20 upgradient sources.

10:05AM 21 Q. Then as far as when he collects samples, does
10:06AM 22 he typically do a map showing the locations where he
10:06AM 23 took those samples, and does he typically fill out a
10:06AM 24 chain of custody? Or do the sample results typically --
10:06AM 25 how do even know these sample results came from my site?

10:06AM 1 A. What's that?

10:06AM 2 Q. I said, how do I even know the results that are
10:06AM 3 listed under Exhibit 4 even came from my site, and where
10:06AM 4 they came from on the site?

10:06AM 5 A. I'll briefly explain how Kent takes samples.

10:06AM 6 Q. And maybe I'm missing something in my packet,
10:06AM 7 but what I'm seeing is a fax cover sheet to you from
10:06AM 8 Kent Sanborn dated 11-15-07 that says, Altec Government
10:06AM 9 Exhibit 4. Right behind is a water quality report from
10:06AM 10 the Oklahoma State University analytical laboratory that
10:07AM 11 lists a sample number from them, and a location that's
10:07AM 12 OK-1.

10:07AM 13 A. Yes. I believe the samples you're referring to
10:07AM 14 -- the sample results you're referring to were sent in
10:07AM 15 from the state biologist John Rempe.

10:07AM 16 A. Okay.

10:07AM 17 Q. Kent Sanborn -- when we collect sample
10:07AM 18 information or salinity information, we use a YSI 30
10:07AM 19 conductivity meter. That's --

10:07AM 20 Q. Okay. So the samples that you're saying were
10:07AM 21 collected by the EPA, they weren't. They were actually
10:07AM 22 collected by the state biologist?

10:07AM 23 A. No.

10:07AM 24 Q. So there's no chain of custody, there's no
10:07AM 25 sample map, there's no anything associated with these

10:07AM 1 samples. So --

10:07AM 2 A. Well, anyway, what Kent had observed was in the
10:08AM 3 two inspection reports, and basically that is what I
10:08AM 4 referenced in the complaint --

10:08AM 5 Q. Okay.

10:08AM 6 A. -- is basically based on Mr. Sanborn's
10:08AM 7 inspections, observations, inspection findings, and that
10:08AM 8 is basically what those salinity levels and those
10:08AM 9 observations is basically what I based this whole -- the
10:08AM 10 gravity component on.

10:08AM 11 Q. Okay. Well, and when I called to discuss with
10:08AM 12 you his report and how it wasn't exactly factual of the
10:08AM 13 events and the time, the naming of the creek, the things
10:08AM 14 like that, what -- what was your response to that?

10:08AM 15 A. I don't recall.

10:08AM 16 Q. You basically just told me that's the statement
10:08AM 17 and we'll deal with that later. So, if you so choose to
10:08AM 18 fight it, you have that right, we'll deal with it then.

10:09AM 19 So, I said, well, Mr. Rudolph, you know,
10:09AM 20 there's -- there's a lot of extenuating circumstances
10:09AM 21 here that are making it look like we weren't being
10:09AM 22 cooperative. I said, there was a Osage [unintelligible]
10:09AM 23 biologist that were on-site that met with Mr. Rempe. I
10:09AM 24 actually had one of my environmental engineers that has
10:09AM 25 his Ph.D. in environmental engineering from Oklahoma

10:09AM 1 University meet with Mr. Rempe at the site.

10:09AM 2 We went over, we discussed everything, we
10:09AM 3 immediately brought in tank trucks, we extracted any
10:09AM 4 water that was in the creek. When Mr. Sanborn came out,
10:09AM 5 he requested that we did a detention pond in the middle
10:10AM 6 of the creek. Do you recall that in his testimony?

10:10AM 7 A. Yes. I believe in the order, we had ordered
10:10AM 8 that to build a detention.

10:10AM 9 Q. Correct. And do you realize why I couldn't
10:10AM 10 follow that order even though I told you verbally, and
10:10AM 11 Kent Sanborn got it direct from the Bureau of Indian
10:10AM 12 Affairs, that I did not have archaeological clearance to
10:10AM 13 dig in the creek bed. The only thing I was authorized
10:10AM 14 to do is to extract water with a pump truck from our
10:10AM 15 site.

10:10AM 16 So we actually had to have hose run down to
10:10AM 17 the -- to the pooling area of the creek. We paid to
10:10AM 18 have it on standby there. Every time it would rain for
10:10AM 19 the next 30 days, we mobilized the pump truck and ran
10:11AM 20 hoes down and waited for the rain.

10:11AM 21 THE COURT: Mr. Adams, a lot of what you're
10:11AM 22 doing right now is direct testimony, rather than
10:11AM 23 questioning Mr. Rudolph.

10:11AM 24 MR. ADAMS: Oh. I'm sorry. I --

10:11AM 25 THE COURT: I --

10:11AM 1 MR. ADAMS: -- was just questioning why --

10:11AM 2 THE COURT: -- I understand that.

10:11AM 3 MR. ADAMS: -- if he recalled this, and why

10:11AM 4 none of this is referenced in the report.

10:11AM 5 THE COURT: I think it is certainly fair

10:11AM 6 for you to ask him whether he considered certain issues,

10:11AM 7 but in terms of going into direct testimony here on --

10:11AM 8 on what you did and what the Bureau of Indian Affairs

10:11AM 9 told you --

10:11AM 10 MR. ADAMS: Okay.

10:11AM 11 THE COURT: -- and allowed you to do, you

10:11AM 12 should probably keep that for your direct testimony.

10:12AM 13 MR. ADAMS: Oh, okay. I apologize.

10:12AM 14 THE COURT: Well, there's no reason to

10:12AM 15 apologize, just a ruling from the bench.

10:12AM 16 MR. ADAMS: Yes. Well, I -- I apologize,

10:12AM 17 but I'm not sure how to proceed then, I guess.

10:12AM 18 THE COURT: Well, all right. Well, do you

10:12AM 19 want to pass the witness then, and -- and get your turn?

10:12AM 20 MR. ADAMS: I -- that's -- that's fine.

10:12AM 21 THE COURT: Well, I have a few questions

10:12AM 22 myself.

10:12AM 23 On these penalty calculations, you have

10:12AM 24 the total monthly -- if I understand your monthly

10:12AM 25 gravity component in your calculations, Mr. Rudolph, you

10:12AM 1 essentially just took each of the violations, assumed

10:12AM 2 they were both of equal gravity, and multiplied the

10:13AM 3 amount of the -- I'm sorry -- not the gravity component,

10:13AM 4 but the culpability component, applied your multiplier

10:13AM 5 to the gravity component on both violations, essentially

10:13AM 6 the same multiplier of 20 percent; is that correct?

10:13AM 7 THE WITNESS: Well, 10 percent for each

10:13AM 8 one.

10:13AM 9 THE COURT: Ten percent. Ten percent for

10:13AM 10 each. Do you see any distinction between the

10:13AM 11 culpability of these violations, given the fact that

10:13AM 12 we've already established on liability in this case, and

10:13AM 13 it is the law of this case right now, that the first

10:13AM 14 discharge occurred as a result of Mr. Adams cleanup

10:13AM 15 attempts as ordered by the State of Oklahoma?

10:13AM 16 THE WITNESS: It appeared -- really it

10:13AM 17 appeared that there was a pit.

10:14AM 18 THE COURT: And we -- we know that there

10:14AM 19 was a pit.

10:14AM 20 THE WITNESS: Yes. Yes.

10:14AM 21 THE COURT: But the law of this case, Mr.

10:14AM 22 Rudolph, the first discharge occurred when Mr. Adams was

10:14AM 23 washing down that pit or the backfill over that pit. We

10:14AM 24 still contained fine drill cutting, big drill cuttings,

10:14AM 25 according to the pictures provided by the State of

10:14AM 1 Oklahoma, had been removed from the pit.

10:14AM 2 Mr. Adams primary culpability here, the way

10:14AM 3 the regional judicial officer sees it at this point, was

10:14AM 4 in using contaminated water from another creek to wash

10:14AM 5 out that pit, and that is how the first discharge

10:14AM 6 occurred; is that correct?

10:14AM 7 To what degree should Mr. Adams be held

10:14AM 8 culpable here for choosing the wrong creek to get his

10:15AM 9 water from?

10:15AM 10 THE WITNESS: I think he should be held

10:15AM 11 responsible.

10:15AM 12 THE COURT: Yes. He is being held

10:15AM 13 responsible, but how much culpability is there -- there?

10:15AM 14 What should he have done?

10:15AM 15 THE WITNESS: Twenty percent is fine for

10:15AM 16 that 6,000 when they pay for that first violation.

10:15AM 17 THE COURT: Okay. So the second --

10:15AM 18 THE WITNESS: So \$1,200. \$1,200.

10:15AM 19 THE COURT: Okay. For the second

10:15AM 20 violation, although you had -- or Mr. Sanborn had

10:15AM 21 already advised Mr. Adams to build a retention basin

10:15AM 22 between the former site of the reserve beds in the

10:15AM 23 creek, he didn't do that, and you subsequently ordered

10:15AM 24 Mr. Adams to build that retention basin.

10:15AM 25 THE WITNESS: Yes, sir.

10:15AM 1 THE COURT: Did you talk to the State of

10:15AM 2 Oklahoma to determine at the time whether Mr. Adams was

10:16AM 3 even allowed on the property. The evidence that's been

10:16AM 4 submitted here, essentially at the front end of this,

10:16AM 5 the State of Oklahoma appears to me to have ordered

10:16AM 6 Mr. Adams to clean it up and get out.

10:16AM 7 THE WITNESS: No. I did not talk to the

10:16AM 8 State of Oklahoma.

10:16AM 9 THE COURT: Okay. And for the record,

10:16AM 10 would you explain the difference in the gravity

10:16AM 11 component between A, significance of violation, and D,

10:16AM 12 significance of non-effluent limit violations. Why is

10:16AM 13 that not the same thing?

10:16AM 14 **A. Well, significance of violations have to do**

10:16AM 15 **with the degree of exceedance of the most significant**

10:16AM 16 **effluent limit violation. He is effluent limit**

10:16AM 17 **violation, meaning it will pertain to a permitted**

10:16AM 18 **discharge, at least that's how I interpreted.**

10:16AM 19 **The specification of noneffluent limitation**

10:17AM 20 **violation, it actually has six subcomponents or six**

10:17AM 21 **non-effluent limit violations there, and one of them is**

10:17AM 22 **unauthorized discharge. And I applied a 1 for each**

10:17AM 23 **gravity component.**

10:17AM 24 THE COURT: Okay. So if I understand

10:17AM 25 correctly, you -- the gravity component that, in your

10:17AM 1 calculations, is attributable. One, to the fact that he
 10:17AM 2 had no permit. And two, to the deleterious effect of
 10:17AM 3 the discharge.
 10:17AM 4 THE WITNESS: Yes, sir.
 10:17AM 5 THE COURT: All right. Okay. And I take
 10:17AM 6 it -- and I just want to clarify this -- that in your
 10:17AM 7 regional calculations, not the ones you presented today
 10:17AM 8 but the ones underlying the second -- the first amended
 10:18AM 9 complaint, you were looking at a failure to report --
 10:18AM 10 were you enhancing that penalty for failure to report.
 10:18AM 11 THE WITNESS: No.
 10:18AM 12 THE COURT: No. Okay. I have no further
 10:18AM 13 questions here. So unless -- all right. You can sit
 10:18AM 14 down, Mr. Rudolph. Thank you very much.
 10:18AM 15 THE WITNESS: Okay.
 10:18AM 16 THE COURT: Well, now it's your turn,
 10:18AM 17 Mr. Adams.
 10:18AM 18 You don't have to ask yourself questions.
 10:18AM 19 You can state your side of the factors that you want to
 10:18AM 20 be considered in terms of the calculation of penalty
 10:18AM 21 right now. Go.
 10:18AM 22 MR. ADAMS: Okay. Well, you know, I -- I
 10:19AM 23 believe that -- that -- an -- an incident occurred on a
 10:19AM 24 site that I was responsible for, that my company -- I'm
 10:19AM 25 not sure of the level I should be held responsible

10:19AM 1 versus some of the extenuating circumstances, such as
 10:19AM 2 upgradients, such as following the direction by washing
 10:19AM 3 the creek and using a water source that had air brine
 10:19AM 4 levels than we had. All I know is that everything did
 10:19AM 5 was done --
 10:19AM 6 THE COURT: Pardon me, Mr. Adams --
 10:19AM 7 MR. ADAMS: -- without question.
 10:19AM 8 THE COURT: Mr. Adams, let me interrupt you
 10:19AM 9 here for a minute. We forgot to swear you. If the
 10:19AM 10 court reporter will swear you over the phone, raise your
 10:19AM 11 right hand, please.
 10:19AM 12 MR. ADAMS: Okay.
 10:19AM 13 THE REPORTER: I can't swear him in. You
 10:19AM 14 can. I can't.
 10:20AM 15 THE COURT: Well, I'll do it then.
 10:20AM 16 Mr. Adams, do you swear or affirm to tell the truth, the
 10:20AM 17 whole truth, and nothing but the truth in your testimony
 10:20AM 18 here?
 10:20AM 19 MR. ADAMS: Yes, I do.
 10:20AM 20 THE COURT: Thank you. Go ahead and
 10:20AM 21 proceed.
 10:20AM 22 MR. ADAMS: Well, I apologize. I kind of
 10:20AM 23 lost my train of thought.
 10:20AM 24 THE COURT: I'm sorry.
 10:20AM 25 MR. ADAMS: But -- but, basically, we -- we

10:20AM 1 understood the potential severity of the issue and we
 10:20AM 2 responded to it. And we spent a tremendous amount of
 10:20AM 3 time, a tremendous amount of money exceeding, well
 10:20AM 4 exceeded what the state required, what the Bureau of
 10:20AM 5 Indian Affairs required in order to just make sure
 10:20AM 6 everything was addressed properly, and that everything
 10:20AM 7 was done in a prudent manner to everyone's satisfaction.
 10:21AM 8 And yes, kind of all of the work we did was
 10:21AM 9 a little bit for naught when the last loads of water
 10:21AM 10 that we grabbed, which we have the ability to grab water
 10:21AM 11 from a flowing creek, we couldn't make it back to -- to
 10:21AM 12 town in time.
 10:21AM 13 The site is relatively remote in order to
 10:21AM 14 refill the water trucks, and so we're -- we're -- the
 10:21AM 15 government regulations were acceptable to grab water
 10:21AM 16 from a flowing water source, which we did, is at the
 10:21AM 17 bottom of our site. Is that water had much higher brine
 10:21AM 18 levels than what we originally started with from our
 10:21AM 19 incident.
 10:21AM 20 Due to the amount of the rain that
 10:21AM 21 occurred, and the fact that, you know, we actually sent
 10:22AM 22 pictures of water two, three, four inches deep passing
 10:22AM 23 across our site, coming from upgradient sites where they
 10:22AM 24 actually had open pits with water in them.
 10:22AM 25 We -- we took pictures of that flowing down

10:22AM 1 the road across our site, but it seems -- it -- it just
 10:22AM 2 seems a little bit unbelievable to me that nobody wants
 10:22AM 3 to look at a potential upgradient source as to being a
 10:22AM 4 factor when we had actually very little water in our
 10:22AM 5 pit. And the fact that our water released when our pit
 10:22AM 6 was filled with rain water in a couple hours because we
 10:22AM 7 had 7 1/2 inches of rain in four hours.
 10:22AM 8 And so I think in terms of, you know,
 10:23AM 9 mitigating penalties, you know, from what we understand
 10:23AM 10 the operator that actually was found to be in violation
 10:23AM 11 for -- for polluting the actual flowing creek, he -- he
 10:23AM 12 received no penalty.
 10:23AM 13 And then where they're referencing things
 10:23AM 14 that we were supposed to do to have continued work on
 10:23AM 15 this site, we -- we haven't had access to the site since
 10:23AM 16 -- I'm not sure what the date from the state attorney
 10:23AM 17 general -- but we've been in a battle with the State of
 10:23AM 18 Oklahoma and the Department of Wildlife that we actually
 10:23AM 19 just finished up last month to give us access to the
 10:23AM 20 site.
 10:23AM 21 So from the time we were denied access to a
 10:24AM 22 month ago, we actually have not had any access to that
 10:24AM 23 site whatsoever to do anything, and I -- I wasn't
 10:24AM 24 knowledgeable of any request for us to do anything.
 10:24AM 25 THE COURT: Well --

10:24AM 1 MR. ADAMS: And then as far as, you know,
 10:24AM 2 some of the requests that were made, we followed every
 10:24AM 3 single request to the letter, except for the -- the
 10:24AM 4 digging of the tension pond in the middle of the creek
 10:24AM 5 because, unfortunately, it was just too far away from
 10:24AM 6 where we had archaeological clearance, and the Bureau of
 10:24AM 7 Indian Affairs would not grant us clearance to go do
 10:24AM 8 that. And the EPA inspector was well aware of it,
 10:24AM 9 because he was standing there when the Bureau of Indian
 10:25AM 10 Affairs representative said, no, you cannot do that.
 10:25AM 11 And it will take us approximately two
 10:25AM 12 months to get clearance to do that. And I told them,
 10:25AM 13 well, what I'll do is I'll use the natural pool at the
 10:25AM 14 top here. And I said, any time it's going to rain over
 10:25AM 15 the next, you know, couple of weeks, I said, we will
 10:25AM 16 insure that we have a hose there, we will pump that
 10:25AM 17 water, and we will dispose of it. And I did that. And
 10:25AM 18 -- and I submitted invoices totalling 20-some thousand
 10:25AM 19 dollars in affirmation that we did those.
 10:25AM 20 There was the state inspector with the
 10:25AM 21 Department of Wildlife was there through all of the
 10:25AM 22 work. So -- it -- it was no mystery that we were
 10:25AM 23 performing those operations. And I just don't believe
 10:26AM 24 any of those events were taken into effect -- taken into
 10:26AM 25 account when they calculated this penalty, and why in

10:26AM 1 the world somebody that actually was ongoing polluting a
 10:26AM 2 creek got no penalty.
 10:26AM 3 That actually created more problems for me,
 10:26AM 4 created more cleanup issues, more cost, but yet, they
 10:26AM 5 weren't -- they -- they weren't penalized for their
 10:26AM 6 actions and to my knowledge have done no remediation
 10:26AM 7 action of the water in the creek.
 10:26AM 8 And I would have liked for the EPA to have
 10:26AM 9 included the -- the documents, the photos, everything
 10:27AM 10 that I sent, I would have liked for them to have
 10:27AM 11 included that in their determination. And I would have
 10:27AM 12 liked for them to include it into the passage so that
 10:27AM 13 Your Honor could have actually seen it .
 10:27AM 14 And, other than that, that's about all I
 10:27AM 15 have.
 10:27AM 16 THE COURT: I have a few questions. Well,
 10:27AM 17 I'm sorry, Ms. Dixon, it's your turn. No questions?
 10:27AM 18 MS. DIXON: No questions.
 10:27AM 19 THE COURT: Mr. Adams, I have a few
 10:27AM 20 questions here.
 10:27AM 21 MR. ADAMS: I'm sorry. I couldn't hear
 10:27AM 22 you.
 10:27AM 23 THE COURT: I have a few questions here.
 10:27AM 24 MR. ADAMS: Yes, sir.
 10:27AM 25 THE COURT: How did you end up -- and I

10:27AM 1 understand that mineral rights are difficult in Osage
 10:27AM 2 County since the subsurface or mineral rights are held
 10:28AM 3 in trust for the Osage Tribe, and the surface owners are
 10:28AM 4 subject to state law.
 10:28AM 5 How in the world did you end up drilling in
 10:28AM 6 this location without -- how did you originally get into
 10:28AM 7 this fix?
 10:28AM 8 MR. ADAMS: Well, basically, it was -- I --
 10:28AM 9 I didn't realize there was an ongoing battle with the
 10:28AM 10 State of Oklahoma and the Federal Government for lands
 10:28AM 11 that they own in the Osage where they're the surface
 10:28AM 12 owner. Nobody actually disclosed that to me.
 10:28AM 13 Basically, we do geological review, and we
 10:28AM 14 pick locations based on -- it's -- it's about 130 points
 10:28AM 15 we go over to pick where we would want to drill. And,
 10:28AM 16 unfortunately, it actually ended up in a location in the
 10:28AM 17 Department of Wildlife. We got the lease, nobody
 10:29AM 18 explained to us that there were issues. We actually
 10:29AM 19 contacted John Rempe, which was the representative that
 10:29AM 20 they told us to contact. I think he was a little bit
 10:29AM 21 unknowledgeable at this friction between the State and
 10:29AM 22 the BIA.
 10:29AM 23 And so we proceeded to submit our permit,
 10:29AM 24 submit everything, get approval. We sent checks for the
 10:29AM 25 location fee. We did everything, and I think,

10:29AM 1 unfortunately, it somehow slipped under the radar and
 10:29AM 2 then next thing you know, we're drilling, and -- and
 10:29AM 3 that's when kind of all heck broke loose.
 10:29AM 4 And that's when there was -- Mr. Rempe was
 10:29AM 5 taking a lot of pressure from the Department of Wildlife
 10:29AM 6 for even allowing us to be out there. The state
 10:30AM 7 attorney general got involved. And needless to say,
 10:30AM 8 it's been a four-year battle --
 10:30AM 9 THE COURT: Okay. That's --
 10:30AM 10 MR ADAMS -- with the State of Oklahoma.
 10:30AM 11 THE COURT: That's -- that's -- I think
 10:30AM 12 you've answered my question. Let me ask --
 10:30AM 13 MR. ADAMS: -- partially by the Federal
 10:30AM 14 Government, but mostly by us too.
 10:30AM 15 THE COURT: Okay. Mr. Adams --
 10:30AM 16 MR. ADAMS: And --
 10:30AM 17 THE COURT: -- Mr. Adams, you've answered
 10:30AM 18 my question already. And I have another one for you.
 10:30AM 19 MR. ADAMS: Okay. Sorry about that.
 10:30AM 20 THE COURT: No. That's okay. I have
 10:30AM 21 another one for you. You indicated that -- that you now
 10:30AM 22 have access to this site. You've reached some agreement
 10:30AM 23 with the State?
 10:30AM 24 MR. ADAMS: Yes, sir.
 10:30AM 25 THE COURT: Is the well currently

10:30AM 1 producing?

10:30AM 2 MR. ADAMS: No, not yet. We just now got

10:30AM 3 through all of the extensions with the Bureau of Indian

10:30AM 4 Affairs, and our attorney is in contact with the

10:31AM 5 Department of Wildlife to finalize everything now. So we

10:31AM 6 don't actually have access to the site yet, but we

10:31AM 7 expect to relatively quick. And, yes, we have an

10:31AM 8 agreement in place. And everything seems to be

10:31AM 9 corrected.

10:31AM 10 THE COURT: Okay. The -- I -- I can't help

10:31AM 11 but wonder, in the conference call you and Ms. Dixon and

10:31AM 12 I had yesterday for our sort of a impromptu status

10:31AM 13 conference we had. You said something about your

10:31AM 14 ability to pay a penalty. Do you want to say anything

10:31AM 15 about that today?

10:31AM 16 MR. ADAMS: Well, this -- this whole

10:31AM 17 situation has actually just devastated me financially.

10:32AM 18 You know, not only did I spend every bit that I had in

10:32AM 19 savings, but I spent -- cashed out my IRAs to make it

10:32AM 20 through this. And, basically, you know -- basically

10:32AM 21 we're -- we're just -- we've -- we've made it to the end

10:32AM 22 here, and we're hoping that we'll be able to borrow

10:32AM 23 enough money on -- in order to -- to continue to

10:32AM 24 complete the drill.

10:32AM 25 THE COURT: Okay. Do you have other

10:32AM 1 producing wells?

10:32AM 2 MR. ADAMS: No, sir.

10:32AM 3 THE COURT: Okay.

10:32AM 4 MR. ADAMS: We have a leasehold that we own

10:32AM 5 a percent of that is producing, but we don't generate

10:32AM 6 any revenue from it yet.

10:32AM 7 THE COURT: Okay.

10:32AM 8 MR. ADAMS: We probably won't be generating

10:33AM 9 revenue from it until January of 2012.

10:33AM 10 THE COURT: Okay. Since I've asked a few

10:33AM 11 questions here, I'm going to give Ms. Dixon another

10:33AM 12 chance to cross-examine.

10:33AM 13 EXAMINATION

10:33AM 14 BY MS. DIXON:

10:33AM 15 Q. I just have a question, Mr. Adams, based upon

10:33AM 16 the questions that Your Honor asked. And my first

10:33AM 17 question is, your -- your title at Altec Petroleum

10:33AM 18 Group, could you -- what is your title there?

10:33AM 19 A. President.

10:33AM 20 Q. And at Altec Engineering, is that also your

10:33AM 21 company?

10:33AM 22 A. Yes.

10:33AM 23 Q. Are you also the president there?

10:33AM 24 A. Yes.

10:33AM 25 Q. And isn't it true that Altec Engineering does

10:33AM 1 environment consulting?

10:33AM 2 A. Yes.

10:33AM 3 Q. And what does that -- what does that entail?

10:33AM 4 A. We do underground storage tanks oversight. We

10:33AM 5 do soil samples. We do site remediation work.

10:34AM 6 Q. Do you consult with other environmental

10:34AM 7 companies about environment regulations and how to

10:34AM 8 comply with those regulations? Do you provide that type

10:34AM 9 of information to them?

10:34AM 10 A. We do in certain aspects, depending on the type

10:34AM 11 of environmental concern and the type of company

10:34AM 12 involved.

10:34AM 13 Q. Okay. And you also mentioned that you now have

10:34AM 14 access with the State to go on to the property. At any

10:34AM 15 time, did you ask EPA to help you gain access to gain --

10:34AM 16 to go on the property?

10:34AM 17 A. No. We were unaware that we needed to be doing

10:34AM 18 anything on the property.

10:34AM 19 Q. Well, in your testimony you stated that you

10:34AM 20 were told to get off the property; is that correct? To

10:34AM 21 clean it up and get off the property?

10:34AM 22 THE COURT: I think that was my statement.

10:35AM 23 A. Correct. But that was from -- that was from in

10:35AM 24 2007. I was referencing a -- kind of a rebuttal to when

10:35AM 25 they reinspected the site in 2008, they made reference

10:35AM 1 that we were supposed to be doing some sort of follow-up

10:35AM 2 that I wasn't aware of.

10:35AM 3 Q. (BY MS. DIXON) Would you --

10:35AM 4 A. And the fact that we couldn't have access to

10:35AM 5 the site because we had an order from the state attorney

10:35AM 6 general that we needed to take care of whatever was

10:35AM 7 done, vacate the site, and that's what we did.

10:35AM 8 Q. So is it your testimony that after September

10:35AM 9 '07, Mr. Rudolph never contacted you again, and told you

10:35AM 10 that you needed to do further cleanup at the site?

10:35AM 11 A. Not that I recall.

10:35AM 12 MS. DIXON: Your Honor, may I have a

10:36AM 13 moment?

10:36AM 14 THE COURT: Yes.

10:36AM 15 A. And we did clean up actions into October, but

10:36AM 16 I'm saying, once that -- that final cleanup was done in

10:36AM 17 October of '07, I don't recall ever speaking to Mr.

10:36AM 18 Rudolph about any follow-up.

10:36AM 19 THE COURT: You're talking about pumping

10:36AM 20 out the -- the last time you pumped out the hole in the

10:36AM 21 creek?

10:36AM 22 MR. ADAMS: That's it.

10:36AM 23 THE COURT: Okay.

10:36AM 24 MR. ADAMS: The last time that we did that,

10:36AM 25 after the last rainstorm, we were done, we honored the

10:36AM 1 cease and desist operations from the State and we
 10:36AM 2 demobilized and we have not been on that site.
 10:36AM 3 THE COURT: Mr. Rudolph -- Mr. Adams, the
 10:36AM 4 invoices in the file, and I don't know if they represent
 10:36AM 5 all of the invoices, indicate that you pumped out the
 10:36AM 6 creek twice. Once, essentially immediately after the
 10:37AM 7 original wash out on -- on your reserve pit, and the day
 10:37AM 8 you back filled it and sprayed it down with salty water
 10:37AM 9 and one other time.
 10:37AM 10 Did you pump out the hole in the creek?
 10:37AM 11 How many occasions did you pump out the hole in the
 10:37AM 12 creek?
 10:37AM 13 MR. ADAMS: I don't recall exactly, but I
 10:37AM 14 know we had at least four or five rain events that we
 10:37AM 15 mobilized for. Some of them, there was no water
 10:37AM 16 generated, so we probably didn't have a water disposal
 10:37AM 17 fee, we probably just had pumping, you know, time for
 10:37AM 18 the truck. And I apologize. I don't have my notes with
 10:37AM 19 me to be able to tell you exactly.
 10:37AM 20 THE COURT: Ms. Dixon, back to you.
 10:38AM 21 MR. ADAMS: But we did pump out the creek
 10:38AM 22 numerous times.
 10:38AM 23 Q. (BY MS. DIXON) Mr. Adams, I want to go back to
 10:38AM 24 your testimony a few moments ago when you stated that
 10:38AM 25 after October '07, you weren't aware that you needed to

10:38AM 1 do anything further at the facility. Is that your
 10:38AM 2 testimony today?
 10:38AM 3 A. That I recall, yes.
 10:38AM 4 Q. Do you remember actually in your testimony
 10:38AM 5 earlier, as well as a Government Exhibit 11 in the
 10:38AM 6 document that you have, a record of communication
 10:38AM 7 between you and Mr. Rudolph?
 10:38AM 8 A. When was that?
 10:38AM 9 Q. March 12th of '08.
 10:38AM 10 A. Yes. I have document 8 in the package.
 10:39AM 11 Q. And in that record of communication, Mr. Adams,
 10:39AM 12 it doesn't state that you informed Mr. Rudolph that you
 10:39AM 13 were denied access, that you couldn't get back on that
 10:39AM 14 property, does it?
 10:39AM 15 A. I -- I don't know. Would you like for me to
 10:39AM 16 read this document and tell you that?
 10:39AM 17 Q. Yes, sir.
 10:40AM 18 A. Oh. I don't see where it was told to Mr.
 10:40AM 19 Rudolph, but at that time, I wasn't actually dealing
 10:40AM 20 with Mr. Rudolph. I don't believe I was dealing with
 10:40AM 21 Kent Sanborn and the Bureau of Indian Affairs biologist.
 10:40AM 22 Q. Right. Mr. -- Mr. --
 10:40AM 23 A. And so I believe the two of them -- that I was
 10:40AM 24 meeting with two of them, and I actually met them, I met
 10:40AM 25 Kent Sanborn at the gate and told him that -- and then

10:40AM 1 when I'm talking about the gate, this lease is actually
 10:40AM 2 up three or four miles off of Highway 10, and I met him
 10:40AM 3 at the gate, and we explained to him that we demobilized
 10:40AM 4 from the property, and that we have been issued a cease
 10:40AM 5 and desist from the State. I don't recall that ever
 10:41AM 6 coming up in a conversation with Mr. Rudolph. But --
 10:41AM 7 Q. Mr. Adams, in the -- in Government Exhibit 11,
 10:41AM 8 Mr. Rudolph tells you that you need to do more to clean
 10:41AM 9 up the site, doesn't he?
 10:41AM 10 A. I -- I don't recall ever having a phone
 10:41AM 11 conversation with Mr. Rudolph in March of '08 where he
 10:41AM 12 told me that we needed to do any further cleanup.
 10:41AM 13 Q. Mr. Adams, wasn't it your testimony earlier
 10:41AM 14 that you had several conversations with Mr. Rudolph in
 10:41AM 15 which --
 10:41AM 16 A. Yes.
 10:41AM 17 Q. -- in which you stated that -- in fact, some of
 10:41AM 18 the language is right here. Would you care to read --
 10:41AM 19 read that one more time?
 10:42AM 20 A. Okay. I -- I don't recall the conversation
 10:42AM 21 where he informed me that there was noncompliances with
 10:42AM 22 the CWA. I do recall discussing the fines, and I do
 10:42AM 23 recall saying that I would like to have a hearing
 10:42AM 24 because we -- we just couldn't -- couldn't communicate
 10:42AM 25 together.

10:42AM 1 Q. Okay. I'm just going to ask you a couple more
 10:42AM 2 questions. We're going to move on. In regarding your
 10:42AM 3 ability to pay, did you ever submit any documents to EPA
 10:42AM 4 regarding your ability to pay this penalty?
 10:42AM 5 A. No. I didn't realize I was needed to.
 10:43AM 6 Q. And one more question, Mr. Adams. You have
 10:43AM 7 discussed rain events, several rain events, actually.
 10:43AM 8 Did you provide EPA with any official
 10:43AM 9 documentation regarding the amount of rain that occurred
 10:43AM 10 -- occurred in Oklahoma during these inspections?
 10:43AM 11 A. Not in writing, but verbally with Mark Hendrix,
 10:43AM 12 the Bureau of Indian Affairs representative and Kent
 10:43AM 13 Sanborn.
 10:43AM 14 Q. And, Mr. Adams, you did see the inspection
 10:43AM 15 reports on 9-17-07 and 3-10-08, correct? Did -- did you
 10:43AM 16 see --
 10:43AM 17 A. I don't recall getting the one from 3-10-08,
 10:43AM 18 but I -- I might have. I did get the inspection report
 10:43AM 19 because I -- from '07, because I discussed -- I recall
 10:43AM 20 discussing it at length with Mr. Rudolph, and some of
 10:44AM 21 the inconsistencies contained in the report and some of
 10:44AM 22 the questions that I had regarding -- or starting the
 10:44AM 23 cleanup at the site.
 10:44AM 24 Q. Mr. Adams, do you have access to the -- the
 10:44AM 25 photographs that included the inspection report on

10:44AM 1 September 17th of '07?

10:44AM 2 A. Yes.

10:44AM 3 Q. And if there was such a rain event as you

10:44AM 4 testified today, wouldn't that -- that ground look very

10:44AM 5 muddy? It wouldn't look dry, would it?

10:44AM 6 A. Well, I don't know. I mean, I don't know the

10:44AM 7 date of the photographs --

10:44AM 8 MS. DIXON: No more questions, Your Honor.

10:44AM 9 A. -- so I apologize. Is there a date on these,

10:44AM 10 Ms. Dixon?

10:44AM 11 THE COURT: That's okay. The question has

10:44AM 12 been answered and asked.

10:44AM 13 MR. ADAMS: Oh, okay.

10:44AM 14 THE COURT: Ms. Dixon, do you have any

10:45AM 15 redirect?

10:45AM 16 MS. DIXON: No, sir.

10:45AM 17 THE COURT: Okay. In that case, the -- the

10:45AM 18 testimony here is closed. I think I will make a couple

10:45AM 19 of remarks, however, some gratuitous advice to you,

10:45AM 20 Mr. Adams.

10:45AM 21 You've mentioned a number of documents that

10:45AM 22 you say -- and aerial photographs -- that you say you

10:45AM 23 have sent to EPA and so forth. Certainly Ms. Dixon and

10:45AM 24 Mr. Rudolph have no real obligation in this matter to

10:45AM 25 submit such evidence, even if they received it. I

10:45AM 1 personally believe they probably didn't. The

10:45AM 2 inspection, or the record of communication that you just

10:45AM 3 discussed, they included in the record, even though it

10:45AM 4 is exculpatory. Had they not included that information

10:46AM 5 on your side of the story in this record, it's very

10:46AM 6 likely that I would have granted the original motion for

10:46AM 7 an accelerated judgment in the amount of \$19,500.

10:46AM 8 It's unfortunate that you didn't send those

10:46AM 9 documents in or communicate in or submit evidence or

10:46AM 10 argument or respond to motions in this proceeding. And

10:46AM 11 I -- it is too late for me to receive any new evidence

10:46AM 12 right now, other than what we've heard today. Next time

10:46AM 13 this happens -- well, not next time it happens. Let's

10:46AM 14 hope it doesn't happen ever again.

10:46AM 15 MR. ADAMS: Exactly. And if it does, I

10:46AM 16 understand that I -- I should have hired an attorney.

10:46AM 17 THE COURT: That probably would have been a

10:46AM 18 good idea. And if not, probably you should have read

10:47AM 19 some of the communications from the EPA more closely

10:47AM 20 before, as -- as you put it in our phone conversation

10:47AM 21 yesterday, before it got to this point.

10:47AM 22 Finally, just another piece of gratuitous

10:47AM 23 advice, you might want to talk to the State and -- and

10:47AM 24 try to get that archaeological clearance, and maybe do

10:47AM 25 whatever it takes at this point to keep your site from

10:47AM 1 contaminating that creek every time it rains.

10:47AM 2 Whatever decision gets issued here on

10:47AM 3 liability will just be for these two instances. You do

10:47AM 4 face potential liability in the future, should it be

10:47AM 5 pursued. I'm not saying it will be or anything, but it

10:48AM 6 would -- Osage County, I'm sure -- your story about

10:48AM 7 bringing in the contaminated water from another creek

10:48AM 8 rang very true to me.

10:48AM 9 Osage County has been producing oil for

10:48AM 10 over 100 years now. And I'm sure there are many, many

10:48AM 11 creeks that have been historically contaminated with

10:48AM 12 brine spills in Osage County. It's unfortunate that

10:48AM 13 there's been another one, but thank you for your

10:48AM 14 participation today. I assume there's no -- you don't

10:48AM 15 want to have any closing arguments, Ms. Dixon, or do

10:48AM 16 you?

10:48AM 17 MS. DIXON: No, sir.

10:48AM 18 THE COURT: Would you like to make any

10:48AM 19 closing arguments, Mr. Adams?

10:48AM 20 MR. ADAMS: No, sir.

10:48AM 21 THE COURT: Okay. With that, I'm going to

10:48AM 22 take this under advisement. I will issue a decision, if

10:48AM 23 necessary, after I receive a copy of the transcript.

10:49AM 24 Meantime, if you and Ms. Dixon wish to continue

10:49AM 25 discussing settlement, that is certainly an option. And

10:49AM 1 with that, these proceedings are closed.

2 (End of proceedings at 10:49 a.m.)

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1 THE STATE OF TEXAS)

2 COUNTY OF DALLAS)

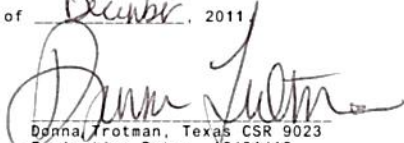
3 I, Donna Trotman, Certified Shorthand Reporter
4 in and for the State of Texas, do hereby certify that
5 the above and foregoing contains a true and correct
6 transcription of all portions of evidence and other
7 proceedings in the above-styled and numbered cause, all
8 of which occurred and were reported by me.

9 I further certify that this transcription of
10 the proceedings truly and correctly reflects the
11 exhibits, if any, admitted by the respective parties.

12 WITNESS MY OFFICIAL HAND this the

13 2nd day of December, 2011

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Donna Trotman, Texas CSR 9023
Expiration Date: 12/31/13
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