

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In The Matter of:	:	ADMINISTRATIVE COMPLAINT AND OPPORTUNITY TO REQUEST HEARING AND CONFERENCE
	:	
Frame and Leany Resources	:	Proceeding to Assess Class II
220 S. Magic Way	:	Civil Penalties Under Section
Henderson, NV 89015	:	311(b)(6)(B) of the Clean Water Act, as
	:	amended, 33 U.S.C. § 1321(b)(6)(B).
	:	
Facility located at:	:	
Aarons Fork Road	:	
Elkview, Kanawha County	:	
West Virginia 25071	:	
	:	
Respondent	:	Docket No. CWA-03-2009-0097

I. STATUTORY AUTHORITY

1. This Administrative Complaint and Opportunity to Request Hearing and Conference (“Complaint”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 311(b)(6)(B) of the Clean Water Act, as amended, (“CWA”), 33 U.S.C. § 1321(b)(6)(B). The Administrator has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has delegated it to the Director of the Region’s Hazardous Site Cleanup Division (“Complainant”).
2. The Administrator of EPA has determined that Class II penalty proceedings for violations of Section 311(b)(3), 33 U.S.C. § 1321(b)(3), and regulations issued under Section 311(j), 33 U.S.C. § 1321(j), and other provisions of the CWA shall be conducted in accordance

with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits* (“Consolidated Rules”), 40 C.F.R. Part 22.

3. Therefore, pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), and in accordance with the Consolidated Rules, Complainant hereby requests that the Regional Administrator assess civil penalties against Respondent, Frame and Leany Resources (“Respondent”), for: (1) discharging oil into navigable waters of the United States in violation of Section 311(b)(3) of the CWA; (2) failure to prepare, certify and implement an SPCC Plan in violation of 40 C.F.R. § 112.3; (3) failure to implement requirements pertaining to inspections and records in violation of 40 C.F.R. § 112.7(e)(8); (4) failure to implement requirements pertaining to personnel, training and spill procedures in violation of 40 C.F.R. § 112.7(e)(10); (5) failure to implement requirements pertaining to oil production facilities in violation of 40 C.F.R. § 112.7(e)(5)(ii)(B); and (6) failure to implement a Flow Line Maintenance Program and failure to address salt water disposal in violation of 40 C.F.R. § 112.7(e)(5)(iv)(B) and (C).

A. Oil Pollution Prevention Regulations

4. In 1974, EPA promulgated 40 C.F.R. Part 112 (“Oil Pollution Prevention Regulations”), 38 Fed. Reg. 34165 (Dec. 11, 1973), which went into effect on January 10, 1974.
5. The Oil Pollution Prevention Regulations were revised in part in 2002, 67 Fed. Reg. 47042 (July 17, 2002), and the changes went into effect August 16, 2002.
6. The Oil Pollution Prevention Regulations again were revised in part in 2006, 71 Fed.

- Reg. 77266 (Dec. 26, 2006), with the changes scheduled to go into effect on February 26, 2007. The implementation deadline subsequently was extended to July 1, 2009. 72 Fed. Reg. 27443 (May 16, 2007).
7. The Oil Pollution Prevention Regulations, 40 C.F.R. Part 112 (1974), which implement Section 311(j) of the CWA, 33 U.S.C. § 1321(j), apply to owners or operators of non-transportation-related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products (“Part 112 Facilities”).
 8. 40 C.F.R. Part 112 (1974) sets forth procedures, methods and requirements to prevent the discharge of oil from Part 112 Facilities into or upon the navigable waters of the United States and adjoining shorelines in such quantities that, as determined by regulation, may be harmful to the public health or welfare or to the environment.
 9. 40 C.F.R. § 112.3(a) (1974) (2001-2002) requires owners and operators of onshore and offshore facilities becoming operational on or before January 10, 1974, the effective date of the regulations, that could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, to prepare Spill Prevention, Control and Countermeasure (“SPCC”) Plans not later than July 10, 1974, and to implement those plans as soon as possible but not later than January 10, 1975. In addition, 40 C.F.R. § 112.3(b) (1974), requires owners and operators of onshore and offshore facilities becoming operational after the effective date of the regulations (January 10, 1974), that could reasonably be expected to discharge oil in harmful

quantities into or upon the navigable waters of the United States or adjoining shorelines, to prepare SPCC Plans not later than six (6) months after the facilities become operational. In addition, 40 C.F.R. § 112.3(a) (2003), requires owners and operators of onshore and offshore facilities that were operational on or before August 16, 2002, to maintain their existing SPCC Plans as required by 40 C.F.R. § 112.3(b) (1974).

10. Oil storage facilities in operation prior to August 16, 2002, were required to maintain their existing SPCC plans and remain in compliance with all preexisting regulatory requirements prior to the implementation deadline for the amended regulations pursuant to 40 C.F.R. § 112.3(a) (2003).¹

B. Definitions

11. "Oil" is defined at Section 311(a)(1), 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2 for purposes of Section 311(b)(3) of the CWA, to include any kind of oil in any form, including petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredge spoil.
12. 40 C.F.R. § 110.3(b) (1974) (amended 2003) defines "harmful quantity," for purposes of Section 311 of the CWA, 33 U.S.C. § 1321, to include discharges that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

¹ Citations to the Oil Pollution Prevention Regulations at 40 C.F.R. Part 112 herein are to the pre-amendment regulations, unless otherwise noted.

13. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), defines “discharge” to include any spilling, leaking, pumping, pouring, emitting, or dumping other than federally permitted discharges pursuant to a permit under 33 U.S.C. § 1342.
14. For purposes of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), “navigable water” is defined by 40 C.F.R. §§ 110.1 and 112.2 (1974) (amended 2003), to include, among other things, tributaries to waters that could be used for industrial purposes or interstate commerce.
15. The definition of “worst case discharge,” found at 33 U.S.C. § 1321(a)(24) and 40 C.F.R. § 112.2, means, in the case of an onshore facility, the largest foreseeable discharge that could occur in adverse weather conditions.
16. The definition of “onshore facility,” found at 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2, means, any facility in, on or under land within the United States, other than submerged land, which is not a transportation-related facility.
17. The definition of “non-transportation-related facility,” found in 40 C.F.R. Part 112, Appendix A and incorporated by reference at 40 C.F.R. § 112.2, includes oil drilling, producing, refining and storage facilities.
18. The definition of “owner or operator,” found at 33 U.S.C. § 1321(a)(6) and 40 C.F.R. § 112.2, means, in the case of an onshore facility, any person owning or operating such an onshore facility.
19. The definition of “navigable waters,” found at 40 C.F.R. § 110.1 and 40 C.F.R. § 112.2 and 20, includes “the waters of the United States, including the territorial seas. . . .”

II. GENERAL ALLEGATIONS

20. Respondent is a Nevada company with a principal place of business in the State of Nevada, and formed in 1982 to purchase and operate wells in West Virginia.
21. Respondent has a principal place of business operating under Standard Industrial Classification (“SIC”) code for oil production 1311 located at Aarons Fork Road, Elkview, Kanawha County, West Virginia.
22. Respondent is a person within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2 (1974) (amended 2003).
23. Respondent is the owner and operator, within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2 (1974) (amended 2003), of an onshore facility as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2 (1974) (amended 2003), consisting of aboveground storage tanks (“ASTs”) with a total capacity of 16,800 gallons (400 barrels: 120 barrel AST; 100 barrel AST; and 180 barrel AST) of crude oil, brine and oily water, which are located at Aarons Fork Road, Elkview, Kanawha County, West Virginia (the “Facility”).
24. Pursuant to 40 C.F.R. § 112.2 (1974) (amended 2003), Respondent is engaged in producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products at the Facility.
25. Upon information and belief, Respondent has operated the Facility since 1982.
26. The Facility has an aggregate storage capacity of approximately 16,800 gallons of crude

- oil, brine and oily water.
27. Respondent is the “owner or operator” of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.
 28. The Facility is a “non-transportation related facility” under the definition incorporated by reference at 40 C.F.R. § 112.2 (2003), set forth in Appendix A thereto and published at 36 Fed. Reg. 24,080 (Dec. 18, 1971).
 29. The Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2.
 30. Leatherwood Creek is a tributary to the Pocatalico River which is a tributary to the Kanawha River, a navigable-in-fact water. Leatherwood Creek, the Pocatalico River, and the Kanawha River are “navigable waters,” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. §§ 110.1 and 112.2.
 31. The Facility is located approximately one-quarter mile away from Leatherwood Creek, a navigable water of the United States.
 32. Due to its location, the Facility could reasonably be expected to discharge oil in harmful quantities, as defined by 40 C.F.R. § 110.3, into or upon a navigable water of the United States or its adjoining shoreline.

III. COUNT ONE – UNPERMITTED DISCHARGE

33. The allegations set for in Paragraphs 1 through 32 are incorporated herein as if fully set forth at length.

34. Pursuant to Section 311(b)(3) of the CWA, the discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone. . . . in such quantities as may be harmful as determined by the President under paragraph (4) of this subsection is prohibited. . . . 33 U.S.C. § 1321(b)(3).
35. Pursuant to Section 311(b)(4), the President shall by regulation determine those quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare or the environment of the United States, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines and beaches. 33 U.S.C. § 1321(b)(4). The Administrator has determined that discharges of oil that may be harmful to the public health or welfare or the environment include, but are not limited to discharges that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. 40 C.F.R. § 110.3(b).
36. On November 7, 2007, Respondent discharged between 20 and 35 barrels of crude oil into Leatherwood Creek, a tributary to Pocatalico River, which is a tributary to the Kanawha River, a navigable waterway, which discharge caused a sheen or discoloration on the surface of the water in violation of 40 C.F.R. § 110.3(b). Respondent reported the spill to the National Response Center (“NRC”), but did not take responsibility for it.
37. Respondent’s discharge of oil in violation of 40 C.F.R. § 110.3(b) is subject to civil penalties of up to \$32,500.00 per day of violation or an amount up to \$1,100 per barrel of

oil or unit of reportable quantity of hazardous substance discharged pursuant to section 311(b)(7) of the CWA, 33 U.S.C. § 1321(b)(7), and 40 C.F.R. Part 19.

IV. COUNT TWO – PLAN VIOLATIONS

38. The allegations set for in Paragraphs 1 through 37 are incorporated herein as if fully set forth at length.
39. Under 40 C.F.R. §§ 112.3, *Requirement to prepare and implement a Spill Prevention, Control and Countermeasures Plan*, the owner or operator of an SPCC-regulated facility must prepare a written SPCC plan in accordance with 40 C.F.R. § 112.7 and any other applicable section of 40 C.F.R. Part 112.
40. On May 1, 2008, EPA inspected Respondent's Facility following the report of a spill of crude oil on November 7, 2007 which was determined following Complainant's review of information provided by Respondent under Section 308 of the Clean Water Act, 33 U.S.C. § 1318. At the time of the inspection, Respondent failed to provide EPA with an SPCC plan as required by 40 C.F.R. § 112.3.
41. Pursuant to 40 C.F.R. § 112.3(b)(1974), owners and operators of onshore and offshore facilities becoming operational after the effective date of the regulations (January 10, 1974), that could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, were required to prepare SPCC Plans not later than six (6) months after the facilities become operational. Respondent's facility began operations in 1982. Respondent did not produce an SPCC

plan until March 1, 2009.

42. In accordance with 40 C.F.R. § 112.3(e), the owner or operator of a facility for which a plan is required must maintain a copy of the plan on Site for review by the Agency during normal working hours.
43. In addition, 40 C.F.R. § 112.3(d), requires that the owner or operator of an SPCC-regulated facility have a licensed Professional Engineer (“PE”) who is familiar with the SPCC regulations and through a visit and personal examination or through a visit and examination by his agent is also familiar with the facility review and certify the SPCC plan as having been prepared in accordance with good engineering practice, including consideration of applicable industry standards, and in accordance with the requirements of the SPCC regulations.
44. 40 C.F.R. § 112.7 requires that SPCC plans be “carefully thought-out” and “prepared in accordance with good engineering practices.”
45. Respondent’s failure to prepare, certify and implement an SPCC plan in accordance with the regulations and good engineering practices is a violation of Section 311(b)(6)(B)(ii), 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. § 112.3 and is subject to civil penalties which may not exceed \$11,000.00 per day for each day during which the violation continues; except that the maximum amount of any class II civil penalty under this subparagraph shall not exceed \$157,500.00, pursuant to section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. Part 19.

V. COUNT THREE – IMPLEMENTATION VIOLATIONS

46. The allegations set forth in Paragraphs 1 through 45 are incorporated herein as if fully set forth at length.

A. Failure to Implement Requirements pertaining to Inspections, Tests, and Records.

47. Under 40 C.F.R. § 112.7, *Guidelines for the preparation and implementation of a Spill Prevention Control and Countermeasure Plan*, Respondent must prepare an SPCC plan in accordance with good engineering practices as well as include a discussion of the conformance of Respondent's Facility with certain requirements including the following:

48. Pursuant to 40 C.F.R. § 112.7(e)(8), Respondent must conduct inspections and tests required by this part in accordance with written procedures developed for the Facility. Such written procedures should be signed by the appropriate supervisor and kept with the SPCC plan for a period of three years.

49. At the time of inspection, Respondent produced no evidence which would demonstrate that these processes were in effect despite the lack of a written SPCC plan.

50. Respondent's failure to maintain written procedures and inspection and test records for a period of three years is a violation of 40 C.F.R. § 112.7(e)(8) and, therefore, Respondent is subject to civil penalties which may not exceed \$11,000.00 per day for each day during which the violation continues; except that the maximum amount of any class II civil penalty under this subparagraph shall not exceed \$157,500.00, pursuant to section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. Part 19.

B. Failure to Implement Requirements pertaining to personnel, training and spill prevention procedures.

51. Pursuant to 40 C.F.R. § 112.7(e)(10)(i), Respondent must, at a minimum, train its oil handling personnel: in the operation and maintenance of equipment to prevent discharges; in discharge procedure protocols; regarding applicable pollution control laws, rules, and regulations; in general Facility operations; and in the contents of the Facility's SPCC plan.
52. Pursuant to 40 C.F.R. § 112.7(e)(10)(ii), Respondent must designate a person at each applicable Facility who is accountable for discharge prevention and who shall report to Facility management.
53. Pursuant to 40 C.F.R. § 112.7(e)(10)(iii), Respondent must schedule and conduct discharge prevention briefings for Respondent's oil-handling personnel at least once a year to assure adequate understanding of the SPCC plan for that Facility.
54. Respondent's failure to implement requirements pertaining to personnel, training, and spill prevention procedures is a violation of 40 C.F.R. § 112.7(e)(10), and, therefore, Respondent is subject to civil penalties which may not exceed \$11,000.00 per day for each day during which the violation continues; except that the maximum amount of any class II civil penalty under this subparagraph shall not exceed \$157,500.00, pursuant to section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. Part 19.

C. Failure to prepare and implement a Spill Prevention Control and Countermeasures Plan.

55. Pursuant to 40 C.F.R. § 112.3(a)-(c), if Respondent is the owner or operator of an onshore production facility, in addition to meeting the general requirements of 40 C.F.R. § 112.7, and the specific discharge prevention and containment procedures listed under 40 C.F.R. § 112.7, and where there is a reasonable possibility of a discharge as described in 40 C.F.R. § 112.1(b), Respondent shall close and seal at all times drains of dikes or drains of equivalent measures required under 40 C.F.R. § 112.7(e)(5)(ii)(A), except when draining uncontaminated rainwater.
56. Additionally, pursuant to 40 C.F.R. § 112.(e)(5)(ii)(A), prior to dike drainage, Respondent must inspect the dike area and take action, such as inspecting the area as required by 40 C.F.R. §112.7(e)(2)(iii)(B), (C) and (D). Further, Respondent is required to remove accumulated oil on the rainwater and return its oil to storage or dispose of it in accordance with legally approved methods. 40 C.F.R. §112.7(e)(5)(ii)(A).
57. Respondent's failure to provide complete discussions in its SPCC plan and to adequately address or implement requirements pertaining to oil production facility (onshore) drainage is a violation of 40 C.F.R. § 112.7(e), and, therefore, Respondent is subject to civil penalties which may not exceed \$11,000.00 per day for each day during which the violation continues; except that the maximum amount of any class II civil penalty under this subparagraph shall not exceed \$157,500.00, pursuant to section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. Part 19.
58. Pursuant to 40 C.F.R. § 112.7(e)(5)(ii)(B), Respondent is required to inspect at regularly scheduled intervals field drainage systems, oil traps, sumps, or skimmers, for an

accumulation of oil that may have resulted from any small discharge and is further required to promptly remove any accumulations of oil.

59. Respondent's failure to provide complete discussions and adequately address or implement requirements pertaining to onshore oil production facility drainage is a violation of 40 C.F.R. § 112.e. Respondent is subject to civil penalties which may not exceed \$11,000.00 per day for each day during which the violation continues; except that the maximum amount of any class II civil penalty under this subparagraph shall not exceed \$157,500.00, pursuant to section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. Part 19.
60. Pursuant to 40 C.F.R. § 112.7(e)(5)(iv)(B), Respondent must implement programs related to Facility transfer operations, and more specifically, inspect saltwater (oil field brine) disposal facilities often, particularly following a sudden change in atmospheric temperature, to detect possible system upsets capable of causing a discharge.
61. In addition, pursuant to 40 C.F.R. § 112.7(e)(5)(iv)(C), Respondent shall have a program of flowline maintenance to prevent discharges from each flowline.
62. Respondent's failure to implement programs related to Facility transfer operations is a violation of 40 C.F.R. § 112.7(e)(5)(iv)(B) and (C), and therefore Respondent is subject to civil penalties which may not exceed \$11,000.00 per day for each day during which the violation continues; except that the maximum amount of any class II civil penalty under this subparagraph shall not exceed \$157,500.00, pursuant to section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. Part 19.

VI. PROPOSED PENALTY

63. Based on the foregoing allegations, and pursuant to the authority of Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), the Complainant proposes that the Regional Administrator, or his delegatee, assess administrative penalties against the Respondent in the following amounts: Count I – \$12,135 for discharging oil into navigable waters of the United States; Count II – \$26,760 for failure to prepare, certify and implement an SPCC Plan; and Count III – \$8,028 for the failure to implement specific and vital requirements pertaining to the SPCC program.
64. The proposed penalty for Counts I through III, totaling \$46,923 was determined after taking into account the factors identified at Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), including: the seriousness of the violation; the economic benefit to the violator 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 violation; the economic impact of the penalty on the violator; and any other factors as justice may require.
65. The proposed penalties may be adjusted by Complainant if Respondent establishes a bona fide issue of an inability to pay or other defenses relevant to the appropriate amount of the proposed penalties.

**VII. ANSWER TO THE ADMINISTRATIVE COMPLAINT AND
OPPORTUNITY TO REQUEST A HEARING**

66. Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), and Section 22.15(c) of the Consolidated Rules, Respondent may request a hearing. The procedures for the hearing, if one is held, are set out in the Consolidated Rules.
67. If Respondent contests any material fact upon which the Complaint is based; contends that the proposed penalties are inappropriate; or contends that it is entitled to judgment as a matter of law, Respondent shall file an original and one copy of a written answer to the Complaint (“Answer”) with the Regional Hearing Clerk and shall serve copies of its Answer on all other parties. Any Answer to the Complaint must be filed within thirty (30) days after service of this Complaint with:

Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Respondent must also provide a copy of its Answer to the attorney representing EPA in this matter at the following address:

Pamela J. Lazos
Sr. Asst. Regional Counsel (3RC20)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(215) 814-2658

68. Respondent's Answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with regard to which Respondent has knowledge. Where Respondent has no knowledge of a particular factual allegation, Respondent shall so state and the allegation shall be deemed denied. Failure to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation. Respondent's Answer shall also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) whether a hearing is requested.
69. If Respondent fails to submit an Answer within thirty (30) days of receipt of this Complaint, and the case is not otherwise disposed of through settlement, Respondent may be found in default. For purposes of this action, a default constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing to contest such factual allegations.

VIII. PUBLIC NOTICE

70. Pursuant to Section 311(b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(B), in the event of the proposed settlement of this matter, including quick resolution pursuant to Section IX below, Complainant will provide public notice of and reasonable opportunity to comment on the proposed issuance of a Final Order assessing administrative penalties against

Respondent. If a hearing is held on this matter, members of the public who submitted timely comments on this penalty proposal shall have the right under Section 311(b)(6)(c) of the CWA, 33 U.S.C. § 1321(b)(6)(c), to be heard and present evidence at the hearing.

IX. SETTLEMENT AND QUICK RESOLUTION

71. In accordance with Section 22.18(a) of the Consolidated Rules, the Respondent may resolve this proceeding at any time by either: (1) paying the full penalty requested in Paragraph 63; or (2) filing a written statement with the Regional Hearing Clerk at the address provided above agreeing to pay, and subsequently paying within sixty (60) days of receipt of this Complaint, the full penalty requested in Paragraph 63. If Respondent pays or agrees to pay within sixty (60) days the specific penalty proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to the Consolidated Rules, no Answer need be filed.
72. If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving this Complaint, stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. Section 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and a copy shall be provided to Pamela J. Lazos (3RC20), Sr. Asst.

Regional Counsel, at the address provided in Paragraph 75, below. Within sixty (60) days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty requested in Paragraph 62.

73. Failure to make such payment within sixty (60) days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.
74. In accordance with 40 C.F.R. § 22.18(a)(3), upon receipt of payment in full, the Regional Judicial Officer or Regional Administrator shall issue a Final Order. Payment by Respondent shall constitute a waiver of Respondent's right to contest the allegations contained in this Complaint and to appeal the final order.
75. Payment shall be made by a cashier's or certified check, or by an electronic funds transfer (EFT). If paying by check, Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency", and bearing the notation "**Oil Spill Liability Trust Fund - 311.**" If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

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

If the Respondent sends payment by a private delivery service, the payment shall be addressed to:

U.S. Bank
1005 Convention Plaza

Mail Station SL-MO-C2GL
St. Louis, MO 63101
Attn: Natalie Pearson (314/418-4087)

If paying by EFT, the Respondent shall make the transfer to:

Federal Reserve Bank of New York
ABA 021030004
Account 68010727
33 Liberty Street
New York, NY 10045

If paying by EFT, field tag 4200 of the Fedwire message shall read: (D 68010727
Environmental Protection Agency).

In the case of an international transfer of funds, Respondent shall use SWIFT address
FRNYUS33.

If paying through the Department of Treasury's Online Payment system, please access
www.pay.gov, enter sfo 1.1 in the search field. Open the form and complete the required
fields and make a payment of \$46,923. Note that the type of payment is "civil penalty,"
the docket number "CWA-03-2009-0097" should be included in the "Court Order # or
Bill #" field and 3 should be included as the Region number.

76. If paying by check, Respondent shall note on the penalty payment check the title and
docket number of this case. Respondent shall submit a copy of the check (or, in the case
of an EFT transfer, a copy of the EFT confirmation) to the following person:

Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency

Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Respondent must also provide a copy of its check to the attorney representing EPA in this matter at the following address:

Pamela J. Lazos
Sr. Asst. Regional Counsel (3RC20)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(215) 814-2658

X. EX PARTE COMMUNICATIONS

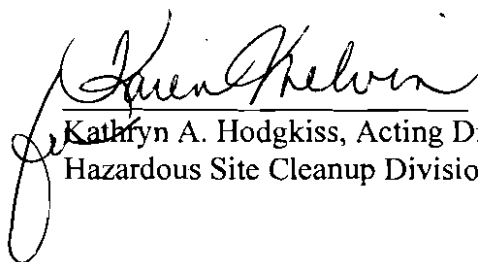
77. The following EPA offices, and the staffs thereof, are designated as the trial staff to represent EPA as a party in this case: the Region III Office of Regional Counsel; the Region III Hazardous Site Cleanup Division; the Office of the EPA Assistant Administrator for Solid Waste and Emergency Response; and the Office of the EPA Assistant Administrator for Enforcement and Compliance Assurance. Please be advised that, pursuant to Section 22.8 of the Consolidated Rules, from the date of this Complaint until the final Agency decision in this case, the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, the Presiding Officer, or any person who is likely to advise these officials on any decision in the proceeding, shall not have any ex parte communication about the merits of the proceeding with Respondent, a representative of Respondent, or any person outside EPA having an interest in the

proceeding, or with any EPA staff member who performs a prosecutorial or investigative function in this proceeding or a factually related proceeding. Any communication addressed to the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party, shall be regarded as argument made in the proceeding, and shall be served upon all other parties.

XI. INFORMAL CONFERENCE

78. Respondent may request an informal conference concerning the alleged violations and the amount of the proposed penalty. The request for an informal conference does not extend the thirty (30) day period in which Respondent must submit its written Answer to preserve the right to a hearing. To request an informal conference relating to this Administrative Complaint, Respondent should contact Pamela J. Lazos, Sr. Asst. Regional Counsel, at (215) 814-2658.

Signed this 18TH day of June, 2009.

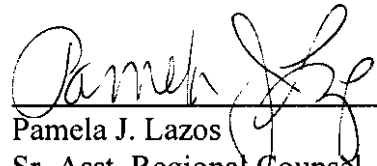

Kathryn A. Hodgkiss, Acting Director
Hazardous Site Cleanup Division

Upon information and belief, I certify this Administrative Complaint as a legally

Frame and Leany Resources
Docket No. CWA-03-2009-0097

sufficient pleading:

Date: 6/22, 2009



Pamela J. Lazos
Sr. Asst. Regional Counsel

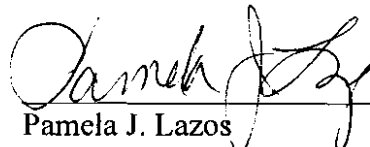
Frame and Leany Resources
Docket No. CWA-03-2009-0097

CERTIFICATE OF SERVICE

I certify that the original Administrative Complaint was filed this day with the Regional Hearing Clerk, with copies sent to:

Frame and Leany Resources
220 S. Magic Way
Henderson, NV 89015

Date: 6/22/09



Pamela J. Lazos
Sr. Asst. Regional Counsel
US EPA, Region III