



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 9
 75 Hawthorne Street
 San Francisco, California**

IN THE MATTER OF:)	
)	DEFAULT ORDER
Andrew Saied,)	
D/B/A Hart Oil and Gas,)	
)	Docket No. OPA-9-2004-0002
Respondent)	
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I. INTRODUCTION

This Default Order is issued in a case brought under the authority of the Clean Water Act, 33 U.S.C. § 1251 et seq. The Administrative Complaint, filed pursuant to Section 311(b)(6)(B)(ii) of the Clean Water Act (“CWA”, “the Act”), 33 U.S.C. § 1321(b)(6)(B)(ii), alleges that the Respondent failed to comply with Spill Prevention, Control and Countermeasure (“SPCC”) regulations set forth at 40 C.F.R. Part 112. Complainant is the Director of the Superfund Division for Region 9 of the Environmental Protection Agency (“EPA”).

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties at 40 C.F.R. Part 22 (“Consolidated Rules”), and based upon the record in this matter and the following Findings of Fact and Conclusions of Law, a Default Order as to liability is entered against the Respondent, and the matter is referred to the Complainant for subsequent submission of a motion and corroborating documentation for assessment of an appropriate penalty, in accordance with the Complaint in this matter.

II. FINDINGS OF FACT

Pursuant to 40 C.F.R. § 22.17(c) and based upon the entire record in this matter, I make the following findings of fact:

2.1 Andrew Saied (“Respondent”), is an individual doing business as Hart Oil and Gas, Inc. Respondent is a person within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7) and 40 C.F.R. § 112.2.

2.2 Respondent is the owner and operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of an oil production facility known as the “F” and “G” units on the Horseshoe Gallup Lease within the Navajo Nation, near Shiprock, San Juan County, New Mexico (“the facility”). Drainage from the facility leads to intermittent stream channels, including Salt Creek Wash (approximately 750 feet away), which in turn discharge into the San Juan River.

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

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

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

2.6 The facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

2.7 The San Juan River and its tributaries are navigable waters of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

2.8 Due to its location, the facility could reasonably be expected to discharge oil in harmful quantities to the navigable waters of the United States or adjoining shorelines, as described in 40 C.F.R. § 110.3.

2.9 Respondent's predecessor began operating the facility sometime prior to 1998. Respondent acquired the facility and has been operating it continuously since at least September, 1999.

2.10 Based on the above, and under 40 C.F.R. § 112.1, Respondent is subject to the requirements of the SPCC regulations as owner and operator of the facility described herein.

2.11 On May 7, 2002, EPA inspected the facility and found that Respondent had failed to prepare an SPCC plan for the facility, a violation of 40 C.F.R. § 112.3.

2.12 On November 20, 2003, EPA issued the Respondent an Administrative Complaint and Opportunity to Request a Hearing ("the Complaint"), pursuant to the authority of Section 311(b)(6)(B)(ii) of the Clean Water Act, 33 U.S.C. § 1321(b)(6)(ii), as amended by the Oil Pollution Control Act. The Complaint was issued for the Respondent's alleged failure to comply with SPCC regulations set forth at 40 C.F.R. Part 112.

2.13 The Respondent was served with the Complaint, by certified mail, return receipt requested, on November 25, 2003.¹ Section 22.15 of the Consolidated Rules requires Respondent to file an Answer with the Regional Hearing Clerk within thirty (30) days after service of the Complaint. Respondent failed to file an answer prior to the expiration of this response period, which was December 26, 2003.

¹Complainant's Motion for Partial Default Order, Attachment A.

2.14 On February 3, 2004, the Respondent was served with a letter from EPA noting that no answer was yet received, and urging a response within fourteen (14) days.² In this letter, Respondent was warned that EPA may seek a default judgment as to liability in this matter unless the Respondent entered into a settlement with EPA that resolved the violations or asserted reasonable cause for the failure to respond. Respondent failed to file a response to the February 3, 2004 letter.

2.15 On July 8, 2004, the Complainant filed a Motion for Default as to liability with the Regional Hearing Clerk. Respondent was served with this motion on July 13, 2004. On July 28, 2004, Respondent timely filed a response to EPA's motion, acknowledging in relevant part that: (1) he has owned Hart Oil and Gas since September, 1999; and (2) he was aware of the requirement to prepare and maintain an SPCC plan, but has not done so.

III. CONCLUSIONS OF LAW

Pursuant to 40 C.F.R. § 22.17 and based upon the entire record in this matter, I make the following conclusions of law:

3.1 Procedure for this case is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. The Consolidated Rules, 40 C.F.R. § 22.17(a), apply to motions for default, and provide in pertinent part:

(a) Default. A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint; Default by respondent constitutes, for purposes of the pending proceeding only, an admission of

²Complainant's Motion for Partial Default Order, Attachment B.

all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations.

(c) Default order. When the Presiding Officer finds that default has occurred, [s]he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued.

3.2 The Complaint was lawfully and properly served upon Respondents in accordance with the Consolidated Rules, 40 C.F.R. § 22.5(b)(1).

3.3 Pursuant to 40 C.F.R. § 22.15(a), Respondent was required to file an answer to the Complaint no later than December 26, 2003.

3.4 Respondent failed to file a timely answer to the Complaint.

3.5 On July 8, 2004, Complainant moved for this Default Order in the manner prescribed by the Consolidated Rules, 40 C.F.R. § 22.17(a). At the time the default order was filed, Respondent had yet to file an answer to the Complaint.

3.6 Respondent is in default pursuant to the Consolidated Rules, 40 C.F.R. § 22.17(a).

3.7 In accordance with 40 C.F.R. § 22.17(a), the default in this case constitutes an admission by Respondent of all the facts alleged in the Complaint and a waiver by Respondent of a right to a hearing regarding these factual allegations. Respondent is thus held to have committed the violations alleged in the Complaint.

3.8 When the Presiding Officer finds that a default has occurred, she shall issue a Default Order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. I find that nothing in the record, including the July 28, 2004 response to the Motion for Default, establishes good cause why a default order should not be issued.

3.9 Accordingly, Complainant's Motion for Default as to liability is GRANTED. Since the matter of an appropriate penalty has not yet been resolved, this Order does not constitute an Initial Decision under 40 C.F.R. § 22.17(c) of the Consolidated Rules. The issue of an appropriate penalty is referred back to the Complainant for subsequent action.

SO ORDERED this 28th day of September, 2004.

SIGNED

**Joanna M. DeLucia,
Regional Judicial Officer
U.S. EPA Region 9**