

FILED

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U.S. EPA REGION 7
HEARING CLERK

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
R.H. Capital-Beets, LLC)
)
Respondents)
)
Proceedings under Section 311(b) of)
the Clean Water Act, 33 U.S.C. § 1321(b))
_____)

**COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

Docket No. CWA-07-2023-0067

COMPLAINT

Section I

STATEMENT OF AUTHORITY

1. This administrative Complaint and Notice of Opportunity for Administrative Hearing (“Complaint”) is issued to R.H. Capital-Beets, LLC. (“Respondent”) pursuant to Section 311(b)(6) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. § 1321(b)(6), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) at 40 C.F.R. Part 22.
2. The authority to take action under Section 311(b) of the CWA, 33 U.S.C. § 1321(b), is vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”). The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, who in turn has delegated it to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7 (Complainant) with concurrence of the Regional Counsel.
3. Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), and in accordance with the Consolidated Rules of Practice, Complainant hereby provides notice of a proposal to assess a civil penalty against Respondent for failures to prepare a Spill Prevention Control and Countermeasure (“SPCC”) Plans as required by regulations promulgated under the authority of Section 311(j) of the CWA, 33 U.S.C. § 1321(j).

Section II

STATUTORY AND REGULATORY BACKGROUND

4. The objective of the CWA, 33 U.S.C. § 1251 *et seq.*, is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”
5. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.”
6. Sections 311(b)(3) and (4) of the CWA, 33 U.S.C. §§ 1321(b)(3) and (4), prohibit the discharge of oil or hazardous substances into or upon the navigable waters of the United States or adjoining shorelines in such quantities as have been determined may be harmful to the public health or welfare of the United States.
7. Section 311(c) of the CWA, 33 U.S.C. § 1321(c), provides authority, delegated to the EPA, to “remove or arrange for the removal of a discharge, and mitigate or prevent a threat of a discharge . . .” of oil.
8. Appendix A to 40 C.F.R. Part 112, Memorandum of Understanding between the Secretary of Transportation and EPA, defines “non-transportation-related” facility to include: oil production facilities including all equipment and appurtenances related thereto; oil refining facilities including all equipment and appurtenances related thereto; oil storage facilities, including all equipment and appurtenances related thereto; fixed bulk plant storage and terminal oil storage facilities; industrial, commercial, agricultural or public facilities which use and store oil; and waste treatment facilities, including in-plant pipelines, effluent discharge lines, and storage tanks.
9. The oil pollution prevention regulations at 40 C.F.R. Part 112 implement the requirements of Section 311(j)(1)(C) of the CWA, and set forth procedures, methods, equipment, and other requirements to prevent the discharge of oil from non-transportation-related onshore facilities into or upon, among other things, the navigable waters of the United States and adjoining shorelines. 40 C.F.R. § 112.1(a)(1).
10. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides in part that the President shall issue regulations establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities, and to contain such discharges.
11. To implement Section 311(j)(1)(C), the EPA promulgated regulations to prevent oil pollution at 40 C.F.R. Part 112 that set forth the requirements for the preparation and implementation of Spill Prevention, Control, and Countermeasure (“SPCC”) Plans. The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore facilities with an aboveground storage capacity of 1,320 gallons or greater who are engaged in gathering, storing, transferring, distributing, using, or consuming oil or oil products

which, due to their locations, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines.

12. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2, define “discharge” to include, but not limited to any spilling, leaking, pumping, pouring, emitting, or dumping except under very limited conditions.

13. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2, define “oil” as oil of any kind and in any form, including but not limited to: petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

14. Section 311(a)(6)(B) of the CWA, 33 U.S.C. § 1321(a)(6)(B) and 40 C.F.R. § 112.2, define “owner or operator” in the case of an onshore facility as any person owning or operating such onshore facility.

15. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2, define “person” as including an individual, firm, corporation, association, and a partnership.

16. EPA may assess a class II civil penalty against any owner, operator, or person in charge of any onshore facility who fails or refuses to comply with any regulations issued under Section 311(j) of the CWA, 33 U.S.C. 1321(j), under Section 311(b)(6)(A)(ii) of the CWA, 33 U.S.C. § 3121(b)(6)(A)(ii).

17. Section 311(b)(6)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(ii), as adjusted pursuant to 40 C.F.R. § 19.4, authorizes the Administrator of EPA to assess class II civil penalties up to \$23,048 per day for each day during which the violation continues, up to a maximum of \$288,080, for violations that occurred after November 2, 2015, where penalties are assessed on or after December 27, 2023.

Section IV

General Factual Allegations

18. 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.

19. Respondent is a Missouri limited liability company registered to conduct business in Kansas.

20. Respondent is engaged in oil and gas exploration, development, and production.

21. At all times relevant to this action, Respondent was the owner and/or 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 approximately 18 oil production leases in Kansas, including oil production facilities in Crawford

County and Neosho County, Kansas, known as the “Strauss Lease,” and the “20th Street Tank Battery Lease” (collectively, the “Leases”) at the following approximate locations:

- a. Strauss Lease: 37.38455 Latitude, -95.088506 Longitude, Strauss, Neosho County, Kansas; and
 - b. 20th Street Tank Battery Lease: 37.399206 Latitude, -95.087649 Longitude, Strauss, Crawford County, Kansas.
22. The 20th Street Tank Battery Lease is located approximately 70 feet west of Hickory Creek.
 23. The Strauss Lease is located approximately 1,800 feet from Hickory Creek.
 24. Hickory Creek is a perennial, continuously flowing stream.
 25. Neosho River is a traditional navigable water.
 26. Hickory Creek is connected to the Neosho River.
 27. Hickory Creek is a relatively permanent tributary connected to a traditional navigable water of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. §1362(7).
 28. At all times relevant to this action, the Strauss Lease had an estimated aggregate above-ground storage capacity of oil and produced water of 93,870 gallons.
 29. At all times relevant to this action, the 20th Street Tank Battery Lease had an estimated aggregate above-ground storage capacity of 18,900 gallons.
 30. The Strauss Lease is a “non-transportation-related” facilities within the meaning of Appendix A of 40 C.F.R. § 112, as incorporated by reference within 40 C.F.R. § 112.2.
 31. The 20th Street Tank Battery Lease is a “non-transportation-related” facilities within the meaning of Appendix A of 40 C.F.R. § 112, as incorporated by reference within 40 C.F.R. § 112.2.
 32. The Strauss Lease 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.
 33. The 20th Street Tank Battery Lease 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
 34. The Strauss Lease is a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity and, therefore, is an SPCC-regulated facility.

35. The 20th Street Tank Battery Lease is a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity and, therefore, are SPCC-regulated facility.
36. Pursuant to Section 311(i)(1)(C) of the CWA, Executive Order 12777, and 40. C.F.R. § 112.1, Respondent, as the owner and/or operator of SPCC-regulated facilities and is subject to the SPCC regulations at all times relevant to this action.
37. At all times relevant to this action, the Respondent did not have an SPCC Plan at the Strauss Lease.
38. At all times relevant to this action, the Respondent did not have an SPCC Plan at the 20th Street Tank Battery Lease.
39. On or about February 25, 2022, crude oil was discharged at the facility located at the Strauss Lease in Neosho County. Kansas Department of Health and Environment and EPA responded on the afternoon of February 25, 2022. EPA coordinated with the respondent to ensure cleanup. Approximately 250 barrels of fluids were recovered. The discharge impacted 250 feet of the lease road and adjacent properties, and approximately 200 feet of 10 Road and the paralleling roadside ditches between the lease and Hickory Creek
40. On March 2, 2022, representatives of the EPA inspected the Strauss Lease and the 20th Street Tank Battery Lease to determine compliance with the SPCC regulations of 40 C.F.R. Part 112.
41. On the date of the inspection, representatives of the EPA observed and photographed evidence of discharges including but not limited to, overfills, leaking storage tanks, and oil stains in the soil at the 20th Street Tank Battery Lease.
42. On the date of the inspection, and at all times relevant to this action, the Strauss Lease did not have general secondary containment for the tank battery piping, and transfer areas at the well heads and tank battery.
43. On the date of the inspection, and at all times relevant to this action, the 20th Street Tank Battery Lease did not have general secondary containment for the tank battery piping, and transfer areas at the well heads and tank battery.
44. A copy of this inspection report was transmitted to Respondent on or about July 29, 2021.
45. On August 9, 2023, the EPA and Respondent entered into an Administrative Order on Consent (“AOC”) to address CWA and SPCC noncompliance at 16 of the Respondent’s Kansas leases, including the Strauss and 20th Street Tank Battery leases.

46. The AOC requires construction of sized containment at all leases subject to the SPCC regulations.

Section V

Findings of Violations

47. The Complainant hereby states and alleges that Respondent has violated the CWA and federal regulations promulgated thereunder as follows:

Failures to Prepare SPCC Plans

48. The fact allegations stated above are herein incorporated by reference.

49. 40 C.F.R. § 112.3 requires the owner or operator of a subject facility to prepare in writing and fully implement a SPCC Plan in accordance with the requirements of 40 C.F.R. Part 112.

50. Respondent did not have an SPCC Plan for the 20th Street Tank Battery Lease at all times relevant to this action.

51. Respondent did not have an SPCC Plan for the Strauss Lease at all times relevant to this action.

52. Respondent's failure to prepare in writing and fully implement SPCC Plans in accordance with the requirements of 40 C.F.R. Part 112 is a violation of 40 C.F.R. § 112.3 and Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C).

Section VI

Relief

53. Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum total penalty of \$125,000. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule of 2022, civil administrative penalties of up to \$26,685, per day for each day during which a violation continues, up to a maximum of \$333,552, may be assessed on or after December 27, 2023, for violations of CWA Section 301, 33 U.S.C. § 1311, that occur after November 2015.

54. Based on the foregoing Findings of Violations, and pursuant to 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), Complainant hereby proposes to issue a Final Order Assessing an Administrative Penalty again Respondents for the violations cited above in the amount of \$83,063.

55. The violations of the Oil Pollution Prevention regulations alleged in above represent significant violations of the CWA because failure to maintain and fully implement an adequate SPCC plan leaves a facility unprepared to deal with an oil spill and to prevent a spill from having potentially serious human health and environmental consequences. The duration of the violations was extensive. The proposed penalty takes into account the seriousness, nature, circumstances, extent, and gravity of the violation, or violations, and Respondent's prior compliance history, the degree of culpability for the cited violations, any economic benefit or savings accruing to Respondent resulting from the violations, Respondent's ability to pay the proposed penalties, and such other matters as justice may require.

NOTICE OF OPPORTUNITY FOR HEARING

Section VII

Answer and Request for Hearing

56. Pursuant to Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), and 40 C.F.R. § 22.14, notice is hereby given that Respondent has the right to request a hearing on any material fact alleged raised in this Complaint and on the appropriateness of any proposed penalty. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is enclosed. Members of the public, to whom EPA is obliged to give notice of this proposed action, have a right under Section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C), to comment on any proposed penalty and to be heard and to present evidence at the hearing.

57. Respondent's Answer must comply with 40 C.F.R. § 22.15 and must be filed with the Regional Hearing Clerk at address listed below within thirty (30) days of receipt of the Complaint. To be entitled to a hearing, Respondent must include its request for a hearing in its Answer to the Complaint.

58. The original and one copy of the Answer, as well as a copy of all other documents which Respondent files in this action, must be sent to:

Regional Hearing Clerk
EPA - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
r7_Hearing_Clerk_Filings@epa.gov

59. To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to hearing, Respondent's Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with respect to which Respondents have any knowledge, or shall clearly state that Respondents have no knowledge as to particular factual allegations in this Complaint. The answer shall also state (a) the circumstances or arguments which are alleged to constitute the grounds of defense; (b) the

facts that Respondent disputes; (c) the basis for opposing any proposed relief; and (d) whether a hearing is requested.

60. Failure to admit, deny, or explain any material factual allegation in this Complaint constitutes an admission of the allegation, pursuant to 40 C.F.R. §22.17.

61. A hearing upon the issues raised by this Complaint and the answer may be held if requested by Respondent in the answer. If Respondent does not request a hearing, the Presiding Officer may hold a hearing if issues appropriate for adjudication are raised in the answer.

62. In any hearing on the proposed penalty for this Complaint, members of the public, to whom the EPA is obligated to give notice of this proposed penalty action, will have the right, under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), and 40 C.F.R. § 22.14, to be heard and present evidence on the merits of the proposed CWA penalty assessment. If no hearing is held, the EPA will issue a Final Order Assessing Administrative Penalties pursuant to the CWA, and only members of the public who submitted timely comments on the proposed penalty assessment will have an additional thirty (30) days to petition to set aside the said Order and to hold a hearing thereon. The EPA will grant the petition and will hold a hearing only if the petitioners' evidence is material and was not considered by the EPA in the issuance of the Final Order.

63. Any hearing that is requested shall be held and conducted in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 C.F.R. Part 22

64. If Respondent fails to file a written answer within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing, they may be found in default. Such default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalties proposed herein shall become due and payable unless the record clearly demonstrates that the requested relief is inconsistent with the CWA.

65. If Respondent does not contest the findings and assessments set forth above, payment of the penalty assessed herein may be remitted as described in the preceding paragraph, including a reference to the name and docket number of the Complaint. In addition, a copy of the check should be sent to:

Regional Hearing Clerk
EPA - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
R7_Hearing_Clerk_Filings@epa.gov

and a copy to:

Anna Landis
Office of Regional Counsel
EPA - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
landis.anna@epa.gov

66. Payment of the total penalty \$83,063 may be made by certified or cashier's check payable to the "Treasurer, United States of America," and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, Missouri 63197-9000

67. The EPA has notified the state of Kansas regarding this proposed action.

Section VIII

Continued Compliance Obligation

68. Neither assessment nor payment of a civil penalty pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), shall affect Respondent's continuing obligation to comply with the CWA, the regulations promulgated thereunder, or any other applicable requirements of Federal, State, or local law.

Section IX

Settlement Conference

69. Whether or not a hearing is requested, an informal settlement conference may be arranged at Respondent's request. To request a settlement conference, please contact:

Anna Landis
Attorney-Advisor
U.S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
Telephone: (913) 551-7113
Email: *landis.anna@epa.gov*

70. A request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted.

71. The EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement. If settlement is reached, the parties will enter into a written Consent Agreement, and a Final Order will be issued. The issuance of such a Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein.

DAVID
COZAD

Digitally signed by DAVID
COZAD
Date: 2024.02.01
16:31:12 -06'00'

David Cozad
Director
Enforcement and Compliance Assurance Division

ANNA
LANDIS

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LANDIS
Date: 2024.02.01
16:42:12 -06'00'

Anna Landis
Attorney-Advisor
Office of Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I delivered true and correct copy of this Complaint and Notice of Opportunity for Hearing to the Regional Hearing Clerk, EPA Region 7.

I further certify that on the date noted below I sent a true and correct copy of the signed original Complaint and Notice of Opportunity for Hearing; a copy of 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, 40 C.F.R. Part 22; and a copy of the Revised CWA Section 404 Settlement Penalty Policy to the following persons:

By electronic mail to:

Troy Renkenmeyer and Tom Heckman
R.H. Capital-Beets, LLC
tommizzou@gmail.com
troy@tdrtaxconsulting.com

By certified mail:

Troy Renkenmeyer and Tom Heckman
RH Capital-Beets, LLC
2015 Clara Drive
Jefferson City, Missouri 65101

Representative(s) for Complainant:

Anne Landis
Office of Regional Counsel
U.S. Environmental Protection Agency Region 7
landis.anna@epa.gov

Mark Aaron
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 7
aaron.mark@epa.gov

Date

Signature