



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8  
1595 WYNKOOP STREET  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

2013 APR -8 PM 2:22

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: CWA-08-2012-0033

IN THE MATTER OF: )  
 )  
CACTUS HILL RANCH COMPANY ) FINAL ORDER  
 )  
RESPONDENT )

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 8<sup>th</sup> DAY OF April, 2013.

Elyana R. Sutin  
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2013 APR -4 PM 2:14

\_\_\_\_\_) )  
In the Matter of: ) )  
Cactus Hill Ranch Company, ) )  
Respondent. ) )  
\_\_\_\_\_)

FILED  
EPA REGION VIII  
HEARING CLERK  
CONSENT AGREEMENT

Docket No. CWA-08-2012-0033

The United States Environmental Protection Agency Region 8 (EPA) and Cactus Hill Ranch Company (Respondent), by their undersigned representatives, hereby consent and agree as follows:

1. On September 13, 2012, the EPA issued a Complaint and Notice of Opportunity for Hearing (Complaint) alleging that the Respondent violated section 301(a) of the Clean Water Act (the Act), 33 U.S.C. § 1311(a), by discharging pollutants without a permit. The Complaint proposed that the Respondent pay an administrative civil penalty for its violations, pursuant to section 309(g) of the Act, 33 U.S.C. § 1319(g).

2. For the purposes of this Consent Agreement only, the Respondent does not dispute that the EPA has jurisdiction over this matter pursuant to section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), and that this proceeding 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) set forth at 40 C.F.R. part 22. The Respondent does not admit the specific factual allegations or legal conclusions made in the Complaint or this Consent Agreement. Nothing in this Consent Agreement shall have precedential effect in any future, unrelated matters, be used or admissible in any unrelated legal proceeding, or preclude the Respondent in unrelated cases from making any factual or legal argument that the Respondent may have raised in this case or that contradicts the factual allegations or legal conclusions made in the Complaint or this Consent Agreement.

3. The Respondent waives any right to contest the allegations in the Complaint and to appeal the Final Order issued by the Regional Judicial Officer approving this Consent Agreement.

4. This Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon the Respondent and the Respondent's successors and assigns. Any change in the Respondent's ownership or operation of the facility at issue, including, but not limited to, any transfer of assets or real or personal property, shall not alter the Respondent's responsibilities under this Consent Agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

5. The Respondent consents and agrees to pay a civil penalty in the amount of sixteen thousand dollars (\$16,000) in the manner described below:

- a. Payment shall be in a single payment of \$16,000, due no later than 30 calendar days from the date of the Final Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. Payment must be received by 11:00 AM Eastern Standard Time to be considered as received that day.
- b. The payment shall be made by remitting a cashier's or certified check or making a wire transfer or on-line payment. The check or other payment shall designate the name and docket number of this case, be in the amount stated in part "a," above, and be payable to "Treasurer, United States of America." It shall be sent as follows:

If sent by regular U.S. mail:

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

If sent by any overnight commercial carrier:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

If sent by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA: 021030004  
Account Number: 68010727

The payment may also be made on-line by accessing "www.pay.gov."

At the same time payment is made, a copy of the check (or notification of wire transfer or on-line payment) shall be sent to:

Seth Draper (8ENF-W-NP)  
Environmental Scientist  
Water Enforcement Program  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

and

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

- c. If the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (e.g., on the 1<sup>st</sup> late day, 30 days of interest will have accrued).
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31<sup>st</sup> day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 30 days of the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
- e. The Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

6. Nothing in this Consent Agreement shall relieve the Respondent of the duty to comply with the Act, its implementing regulations, and any permit issued thereunder.

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

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

9. The undersigned individual certifies that he is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind the Respondent to the terms and conditions of this Consent Agreement.

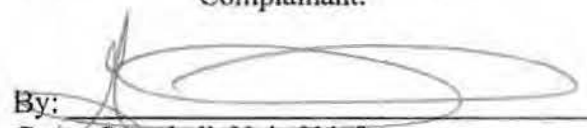
10. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.

11. Each party shall bear its own costs and attorney's fees in this matter.


12. This Consent Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a full settlement of the United States' claims for civil penalties against the Respondent for the specific violations alleged in the Complaint.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY REGION 8,  
Complainant.

Date: 04/04/13

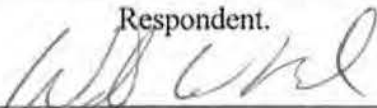
By:   
Gwen Campbell, Unit Chief  
NPDES Enforcement Unit  
Office of Enforcement, Compliance,  
and Environmental Justice  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

Date: 4.4.13

By:   
James H. Eppers, Supervisory Enforcement Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance,  
and Environmental Justice  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

CACTUS HILL RANCH COMPANY,  
Respondent.

Date: 3-29-13

By:  sec-treas  
Walter Nelson, Secretary

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT and FINAL ORDER** in the matter of **CACTUS HILL RANCH COMPANY; DOCKET NO.: CWA-08-2012-0033**. The **CONSENT AGREEMENT** was filed with the Regional Hearing Clerk on April 4, 2013; the **FINAL ORDER** was filed on April 8, 2013

Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Margaret "Peggy" Livingston, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were sent and placed in the United States mail certified/return receipt on April 8, 2013 to:

Attorney for Respondent


Laura J. Riese, #18936  
Nicole M. Abbott #34897  
Davis, Graham & Stubbs  
1550 17<sup>th</sup> Street, Suite 500  
Denver, CO 80202

And emailed to:

Honorable Susan L. Biro, Chief  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Mail Code 1900R  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Kim White  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

April 8, 2013

  
Tina Artemis  
Paralegal/Regional Hearing Clerk



Printed on Recycled Paper