

Jurisdiction and Waiver of Right to Judicial Review and Hearing

7. For the purposes of the CAFO, Respondent admits the jurisdictional allegations in this CAFO. Respondent neither admits nor denies the factual allegations and alleged violations in this CAFO.

8. Respondent waives its right to obtain judicial review of this CAFO under Section 311(b)(6)(G) of the CWA, 33 U.S.C. § 1321(b)(6)(G), its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil or hazardous substances *inter alia* into or upon the navigable waters of the United States or adjoining shoreline in “such quantities as may be harmful,” as determined pursuant to Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4).

10. Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), requires the President to determine by regulation the 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.

11. Pursuant to Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), U.S. EPA promulgated 40 C.F.R. § 110.3, wherein it determined that the discharge of oil in “such quantities as may be harmful” to the public health or welfare or the environment of the United States includes discharges that: (a) violate applicable water standards; or (b) 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.

12. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), defines "oil" as "oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged soil."

13. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), defines "discharge" as including but "not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping...."

14. Section 311(a)(6)(B) of the CWA, 33 U.S.C. § 1321(a)(6)(B), defines "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), defines "person" to include "an individual, firm, corporation, association, [or] a partnership."

16. Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), defines "onshore facility" as "any facility. . . of any kind located in, on, or under, any land within the United States."

Oil Pollution Prevention Requirements

17. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), requires the President to 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 and offshore facilities, and to contain such discharges.¹

¹The President delegated the authority to promulgate these regulations for non-transportation-related onshore facilities to U.S. EPA. See Executive Order 11,548 (July 20, 1970); 33 Fed. Reg. 11,677 (July 22, 1970), Executive Order 12,777 (October 18, 1991), 56 Fed. Reg. 54,757 (October 22, 1991).

18. Pursuant to Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), U.S. EPA promulgated oil pollution prevention regulations (set forth at 40 C.F.R. Part 112) establishing procedures, methods, equipment, and other requirements to prevent the discharge of oil from non-transportation-related onshore facilities into or upon the navigable waters of the United States and adjoining shorelines. *See* 40 C.F.R. § 112.1(a)(1).

19. The oil pollution prevention regulations at 40 C.F.R. Part 112 apply *inter alia* to owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, storing, processing, or using, oil and oil products, which due to their location, could reasonably be expected to discharge oil in quantities that may be harmful under 40 C.F.R. § 110.3, into or upon the navigable waters of the United States or adjoining shorelines, and have an aboveground oil storage capacity of more than 1,320 U.S. Gallons. *See* 40 C.F.R. § 112.1(b) and 112.1(d)(2)(ii).

20. 40 C.F.R. § 112.2 defines “discharge” as including, but not limited to, “any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of oil.”

21. 40 C.F.R. § 112.2 defines “oil” as “oil of any kind or in any form, including, but not limited to. . . petroleum, fuel oil, sludge, synthetic oils, mineral oils, oil refuse, or oil mixed with wastes other than dredged soil.”

22. 40 C.F.R. § 112.2 defines “owner or operator” as *inter alia* “any person owning or operating an onshore facility. . . .”

23. 40 C.F.R. § 112.2 defines “facility” as *inter alia* “any mobile or fixed, onshore or offshore building, property, parcel, lease, structure, installation, equipment, pipe, or pipeline. . . used in oil well drilling operations, oil production, oil refining, oil storage, [or] oil gathering. . . .”

24. 40 C.F.R. § 112.2 defines “onshore facility” as “any facility of any kind located in, on, or under any land within the United States, other than submerged lands.”

25. A “non-transportation-related facility” is defined to include *inter alia* “. . . mobile onshore and offshore oil well drilling platforms, barges, trucks, or other mobile facilities including all equipment and appurtenances related thereto when such mobile facilities are fixed in position for the purpose of drilling operations for exploratory or development wells, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.”²

Navigable Waters of the United States

26. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States, including the territorial seas.”

27. 40 C.F.R. § 112.2 defines “navigable waters of the United States” to mean “navigable waters” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

Enforcement

28. U.S. EPA may assess a class I or class II civil penalty against any person who is the owner, operator, or person in charge of *inter alia* any onshore facility: (a) from which oil or a hazardous substance is discharged into or upon the navigable waters of the United States in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1311(b)(3); or (b) who is subject to the oil pollution prevention regulations of 40 C.F.R. Part 112 issued under the authority of Section 311(j) of the CWA, 33 U.S.C. § 1311(j), who fails or refuses to comply with 40 C.F.R. Part 112.

²As set forth in the “Memorandum of Understanding Between the Environmental Protection Agency and the Department of Transportation,” 36 Fed. Reg. 24,080 (Dec. 18, 1971), incorporated by reference by 40 C.F.R. § 112.2, and set forth in 40 C.F.R. Part 112, Appendix A.

U.S. EPA's General Allegations

The Property and the Waters

29. On March 16, 2011, PDC entered into a contract with Orin and Teri Lee Palmer ("the Palmers"), the owners of land located at or about 1010 Center Bend Road, Beverly, Morgan County, Ohio ("Property"), under which the Palmers granted PDC such rights as may be reasonably necessary for PDC to conduct operations on the Property for exploring, developing, and marketing oil and gas substances, including but not limited to seismic and geophysical operations, the drilling of wells, and other facilities deemed by PDC to be necessary to explore, discover, produce, store, treat and/or transport Oil and Gas Substances.

30. The Property is adjacent to and abuts a series of ditches which connect to an unnamed stream downstream of the ditches ("the Unnamed Tributary to Cow Run").

31. The Unnamed Tributary to Cow Run flows primarily east for approximately three-quarters of a mile before flowing into Cow Run (a.k.a "Cow Run Creek"). *See* Exhibit 1. Cow Run flows south approximately one mile into Olive Green Creek (a.k.a "Olive Creek"). *See* Exhibit 1. Olive Green Creek flows southwest approximately one mile before flowing into the Muskingum River. *See* Exhibit 1. The Muskingum River flows into the Ohio River at Marietta, Ohio (after approximately 20 miles).

32. The Ohio River runs for over 900-miles, flowing through or along the border of six states, is an interstate river that is used by interstate travelers for recreational or other purposes, and is a navigable-in-fact water (a/k/a "traditional navigable water").

33. The Muskingum River is a navigable-in-fact water that runs for over 100 miles before becoming a tributary of the Ohio River.

34. Olive Green Creek has a relatively permanent flow and is a perennial tributary of the Muskingum River.

35. Cow Run has a relatively permanent flow, and is a perennial tributary of Olive Green Creek.

36. The Unnamed Tributary to Cow Run has a relatively permanent flow, and is a perennial tributary of Cow Run.

37. The Unnamed Tributary to Cow Run, Cow Run, Olive Green Creek, the Muskingum River, and the Ohio River are “navigable waters” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), Section 311(j) of the CWA, 33 U.S.C. § 1321(j), and 40 C.F.R. § 112.2 (2014).

Respondent

38. On May 4, 2014, and at all times relevant to this Complaint, PDC was a corporation doing business in the State of Ohio, and is and was 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.

Wellbore #1H

39. On December 21, 2012, PDC contracted with Helmerich & Payne, International Drilling Company (“H&P”) for H&P to drill certain designated wells searching for natural gas or oil, including Palmer Wellbore #1H (“December 21, 2012 Contract”).

40. Pursuant to the December 21, 2012 Contract, H&P furnished labor and equipment, including H&P Drilling Rig 385 (“H&P Rig 385”), and conducted drilling operations on the Property, including drilling Palmer Wellbore #1H.

41. On May 4, 2014, and at all times relevant to this Complaint, Palmer Wellbore #1H was situated on land located on the Property.

42. On May 4, 2014, and at all times relevant to this Complaint, Palmer Wellbore #1H was an "onshore facility" as defined by Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2.

The May 4, 2014 Oil Discharge

43. On May 4, 2014, and at all times relevant to this Complaint, Respondent and/or persons acting on its behalf or with Respondent's consent and/or knowledge, utilized synthetic oil based drilling mud ("Drilling Mud") as part of the drilling process at Palmer Wellbore #1H.

44. A synthetic oil blend comprised approximately 75% of the Drilling Mud Respondent utilized at Palmer Wellbore #1H on May 4, 2014, and at all times relevant to this Complaint.

45. On May 4, 2014, and at all times relevant to this Complaint, the Drilling Mud was "oil" as defined at Section 311(a)(1) of the CWA, 33 U.S.C. § 1311(a)(1) and 40 C.F.R. § 112.2.

46. On May 4, 2014, Respondent and/or persons acting on its behalf or with Respondent's consent and/or knowledge, was drilling Palmer Wellbore #1H, and had reached a total measured depth of about approximately 8,617 feet.

47. At approximately 11:30 AM EST on May 4, 2014, a mechanical failure of the gasket on the double studded adaptor resulted in a loss of well control at, or in, Palmer Wellbore #1H.

48. Following the loss of well control referenced in paragraph 47, Drilling Mud (i.e. "oil") was emitted from the well boring onto the surface of the drilling pad and down gradient into storm-water control drainage ditches adjacent to the north, east and south perimeters of the well pad, and flowed downstream of the ditches into the Unnamed Tributary to Cow Run referenced in paragraphs 30, 31, 36, and 37.

49. The discharge of oil from Palmer Wellbore #1H lasted for approximately 56 hours from 11:30 am EST on May 4, 2014 until 9:00 pm EST on May 6, 2014.

Violations

Count I-Violation of Section 311(b) of the CWA

50. Complainant incorporates paragraphs 1 through 49 of this Complaint as though set forth in this paragraph.

51. On May 4, 2014, and at all times relevant to this Complaint, Respondent was an owner, operator, or person in charge of the Palmer Wellbore #1H land-based natural gas well and the drilling rig, including *inter alia*, the well casing, the wellhead assembly, the double studded adapter (“ASA”), the blow-out preventer (“BOP”) equipment, the well pad, the BOP stack, the rise and associated piping, and other relevant equipment.

52. On May 4, 2014, and at all times relevant to this Complaint, Respondent was an “owner, operator, or person in charge of an onshore facility,” within the meaning of Section 311(b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(B).

53. Beginning on May 4, 2014, Palmer Wellbore #1H discharged approximately 432 barrels of oil from the well boring into the Unnamed Tributary to Cow Run referenced in paragraphs 30, 31, and 36, which is a “navigable water” as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

54. The oil discharge from Palmer Wellbore #1H beginning on May 4, 2014 into a navigable water of the United States violated applicable water standards, and/or caused a film or sheen upon or discoloration of the surface of the water and/or adjoining shorelines, or caused a sludge or emulsion to be deposited beneath the surface of the water and/ or upon adjoining shorelines.

55. The emission of the Drilling Mud from Palmer Wellbore #1H beginning on May 4, 2014, was a “discharge” of “oil,” as defined at Section 311(a)(2) of the CWA, 33 U.S.C. § 1311(a)(1), “in such quantities as may be harmful” to the public health or welfare or the environment of the United States, within the meaning of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3) and 40 C.F.R. § 110.3.

56. Therefore, beginning on May 4, 2014, Respondent was a person who discharged oil into or upon navigable waters of the United States from an onshore facility in such a quantity as may be harmful, in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

Count II-Violation of Section 311(j) of the CWA

57. Complainant incorporates paragraphs 1 through 49 of this Complaint and Notice as though set forth in this paragraph.

58. Owners or operators of non-transportation related onshore oil drilling and workover facilities are required to meet: (1) the general requirements listed under 40 C.F.R. § 112.7; and (2) the specific discharge prevention and containment procedures listed in 40 C.F.R. § 112.10(b) – (d). *See* 40 C.F.R. § 112.10(a).

59. 40 C.F.R. § 112.10(c) requires that the owner or operator of an onshore oil drilling and workover facility provide catchment basins or diversion structures at its oil drilling facility to intercept and contain discharges of fuel, crude oil, or oily drilling fluids.

60. 40 C.F.R. § 112.10(d) requires that the owner or operator of an onshore oil drilling and workover facility install a BOP assembly and well control system before drilling below any casing string or during workover operations. The BOP assembly and well control system must be capable of controlling any well-head pressure that may be encountered while that BOP assembly and well control system are on the well.

61. On May 4, 2014, and at all times relevant to this Complaint, Respondent was an “owner,” or “operator” of Palmer Wellbore #1H, as defined at 40 C.F.R. § 112.2.

61. On May 4, 2014, and at all times relevant to this Complaint, Palmer Wellbore #1H was a “non-transportation-related” “onshore facility,” engaged in drilling “oil.” as those terms are defined at 40 C.F.R. § 112.2, and 40 C.F.R. Part 112, Appendix A.

62. On May 4, 2014, and at all times relevant to this Complaint, Respondent was engaged in drilling, storing, or using oil and oil products, which due to their location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in 40 C.F.R. § 110.3, into or upon the navigable waters of the United States or adjoining shorelines, including, but not limited to, the Unnamed Tributary to Cow Run.

63. On May 4, 2014, and at all times relevant to this Complaint, Palmer Wellbore #1H had an aboveground oil storage capacity of more than 1,320 U.S. gallons.

64. On May 4, 2014, and at all times relevant to this Complaint, the oil pollution prevention regulations of 40 C.F.R. Part 112 applied to Respondent, Palmer Wellbore #1H, and Respondent’s activities at Palmer Wellbore #1H involving drilling, storing, or using oil and oil products.

65. On May 4, 2014 and at all times relevant to this Complaint: (1) there were an insufficient amount of catchment basins or diversion structures onsite at Palmer Wellbore #1H to intercept and contain the discharge of oily drilling fluids emitting from the wellbore; and (2) the BOP assembly and well control system in place at Palmer Wellbore #1H was incapable of controlling the well-head pressure encountered at the time of the May 4, 2014 loss of well control incident referenced in Paragraphs 47-49.

66. On May 4, 2014, as a result of Respondent's acts or omissions set forth in Paragraph 65: (1) the well control system at Palmer Wellbore #1H failed to control the well-head pressure as a result of a mechanical failure of the gasket on the double studed adaptor as referenced in Paragraphs 46-48; and (2) the catchment basins or diversion structures at Palmer Wellbore #1H failed to intercept and contain the "discharge," as defined at 40 C.F.R. § 112.2, of approximately 432 barrels of Drilling Mud from the wellbore into "navigable waters of the United States," as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), 40 C.F.R. § 112.2.

67. The Drilling Mud that emitted from Palmer Wellbore #1H on May 4, 2014 and thereafter was an "oily drilling fluid" as defined by 40 C.F.R. § 112.10(c).

68. By failing to meet the specific discharge prevention discharge prevention and containment procedures set forth at 40 C.F.R. § 112.10(c) and (d), Respondent violated Section 311(j) of the CWA, 33 U.S.C. § 1321(j).

Civil Penalty

69. Based on analysis of the factors specified in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), the facts of this case, the *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act*, dated August 1998, Complainant has determined that an appropriate civil penalty to settle this action is \$151,871.

70. Within 30 days after the effective date of this CAFO, Respondent must pay a \$151,871 civil penalty by an electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

The comment or description field of the electronic funds transfer must state Respondent's name and the docket number of this CAFO.

71. Upon payment of the penalty, Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to U.S. EPA at the following addresses:

Ellen Riley (SC-5J)
Enforcement Officer
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

John Matson (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

72. This civil penalty is not deductible for federal tax purposes.

73. If Respondent does not pay timely the civil penalty or any stipulated penalties due under paragraph 74, below, U.S. EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

74. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 20 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 33 U.S.C. § 1321(b)(6)(H).

General Provisions

75. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

76. The CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

77. This CAFO does not affect Respondent's responsibility to comply with the CWA and other applicable federal, state and local laws. Compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by U.S. EPA. Respondent certifies that it is complying fully with Section 311 of the CWA and the oil pollution prevention regulations at 40 C.F.R. Part 112.

78. This CAFO constitutes a "prior violation(s)" as that term is used in U.S. EPA's Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act to determine Respondent's "history of prior violations" under Section 311(b)(8) of the CWA 33 U.S.C. § 1321(b)(8).

79. The terms of this CAFO bind Respondent, its successors and assigns.

80. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

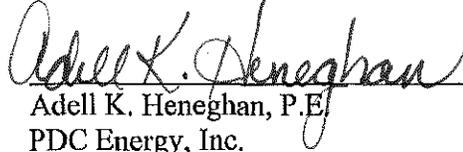
82. Each party agrees to bear its own costs and attorney fees in this action.

82. This CAFO constitutes the entire agreement between the parties.

83. Complainant has provided public notice of and reasonable opportunity to comment on the proposed issuance of this CAFO in accordance with Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i) and 40 C.F.R. § 22.45(b).

PDC Energy, Inc., Respondent

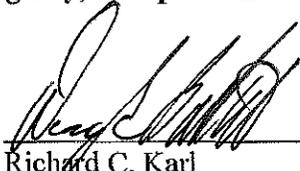
Nov 03, 2015
Date



Adell K. Heneghan, P.E.
PDC Energy, Inc.
Vice President, Environmental Health and Safety

United States Environmental Protection Agency, Complainant

11/25/2015
Date



for Richard C. Karl
Director
Superfund Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: PDC Energy, Inc.
Docket No. CWA-05-2016-0005

Final Order

More than forty days have elapsed since the issuance of the public notice and opportunity to comment on this Consent Agreement and Final Order, and U.S. EPA has received no comments. Therefore, this Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5