



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

VIA UPS OVERNIGHT DELIVERY

Mr. Paul Hart, President
Hart Resource Technologies, Inc.
Pennsylvania Brine Treatment, Inc.
5035 U.S. Route 110 West
Creekside, Pennsylvania 15732

MAY 08 2013

Mr. Devesh Mittal
Fluid Recovery Services, LLC
1 Four Coins Drive
Canonsburg, Pennsylvania 15317

Re: Administrative Order for Compliance on Consent
EPA Docket No.: CWA-03-2013-0051DN

Dear Messrs. Hart and Mittal:

Enclosed please find a fully executed copy of the Administrative Order for Compliance on Consent (AOCC) between EPA and Fluid Recovery Services, Inc. (FRS), Hart Resource Technologies, Inc. (Hart), and Pennsylvania Brine Treatment, Inc (PBT). The AOCC, along with two Consent Agreements and Final Orders (CAFOs) (In re: Hart Resource Technologies, Inc.; EPA Docket No.: CWA-03-2013-0049; and In re: Pennsylvania Brine Treatment, Inc.; EPA Docket No.: CWA-03-2013-0050), collectively embody the settlement of EPA's alleged Clean Water Act violations at facilities currently owned and/or operated by Hart and PBT, located in Creekside, Pennsylvania (Hart), Franklin, Pennsylvania (PBT) and Josephine, Pennsylvania (PBT) (hereinafter, the Facilities). As the parties have discussed, the CAFOs will be finalized after EPA considers any public comments received during the public comment period, which will conclude forty (40) days after the CAFOs are issued.

EPA understands that FRS, Hart, and PBT have also entered into a Consent Order and Agreement (COA) with the Pennsylvania Department of Environmental Protection (DEP) relating to the transfer of National Pollutant Discharge Elimination System Permits from Hart and PBT to FRS. EPA further understands that the COA also provides for the cleanup of radium and other radionuclide materials found at the Facilities pursuant to Pennsylvania's Clean Streams Law, Radiation Protection Act and other state statutes.



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If you require any information or assistance regarding this matter, please contact Mr. Mark Bolender, Assistant Regional Council at 215-814-2642 or Ms. Rebecca Crane, Enforcement Officer, NPDES Enforcement Branch, 215-814-2389.

Sincerely,



Jon M. Capacasa, Director
Water Protection Division

Enclosure

cc: Mr. John Holden, PADEP Northwest Regional Office
Mr. Samuel Harper, PADEP Southwest Regional Office
Mr. Lee McDonnell, PADEP Central Office



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of

Fluid Recovery Services, LLC
One Four Coins Drive
Canonsburg, PA 15317

Hart Resource Technologies, Inc.
5035 U.S. Route 110 West
Creekside, PA 15732

Pennsylvania Brine Treatment, Inc.
5035 U.S. Route 110 West
Creekside, PA 15732

Respondents.

Docket No. CWA-03-2013-0051DN

**ADMINISTRATIVE ORDER FOR
COMPLIANCE ON CONSENT**

REGIONAL HEARINGS CLERK
EPA REGION III, PHILA. PA

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ADMINISTRATIVE ORDER FOR COMPLIANCE ON CONSENT

I. STATUTORY AUTHORITY

1. This Administrative Order for Compliance on Consent ("AOCC" or "Order"), Docket No. CWA 03-2013-0051DN, is issued to Fluid Recovery Services, LLC ("FRS"); Hart Resource Technologies, Inc. ("HRT"); and Pennsylvania Brine Treatment, Inc. ("PBT"), collectively "Respondents," under the authority vested in the United States Environmental Protection Agency ("EPA") by Section 309(a) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(a). The Administrator has delegated this authority to the Regional Administrator of EPA Region III, who, in turn, has re-delegated such authority to the Director of the Water Protection Division for EPA Region III.

II. BACKGROUND

2. Respondent FRS is a Delaware Limited Liability Company.
3. Respondent FRS will be the successor in interest to HRT and PBT as a result of a merger, scheduled to take place on May 9, 2013. When the merger occurs, all assets and liabilities of HRT and PBT will be merged into FRS.

In re: Fluid Recovery Services, LLC; Hart Resource Technologies, Inc.;
& Pennsylvania Brine Treatment, Inc.
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4. As the sole successor to HRT and PBT, Respondent FRS will become the operator of the Creekside centralized waste treatment (“CWT”) facility and the owner and operator of the Josephine and Franklin CWT facilities (collectively, the “Facilities”) as set forth below:
 - a. Hart Resource Technologies- Creekside Facility (the “Creekside Facility”)
5035 U.S. Route 110 West
Creekside, PA 15732;
 - b. Pennsylvania Brine Treatment- Josephine Facility (the “Josephine Facility”)
931 Bells Mill Road
Josephine, PA 15750; and,
 - c. Pennsylvania Brine Treatment- Franklin Facility (the “Franklin Facility”)
5148 U.S. Route 322
Franklin, PA 16323.
5. On September 28, 2011, EPA issued Administrative Orders for Compliance to HRT (Docket No. CWA-03-0269DN) and PBT (Docket Nos. CWA-03-0273DN and CWA-03-0274DN) for exceeding effluent limits in the Facilities’ respective National Pollutant Discharge Elimination System (“NPDES”) permits in violation of Section 301 of the Act, 33 U.S.C. § 1311.
6. Issued concurrently with this AOCC are two Consent Agreements and Final Orders (“CAFOs”): (1) Docket No. CWA-03-2013-0049 between EPA and HRT; and (2) Docket No. CWA-03-2013-0050 between EPA and PBT; that resolve administrative penalty liability for CWA violations alleged by EPA in the Administrative Orders referenced in Paragraph 5.
7. EPA considered the terms of this AOCC in entering into the CAFOs referenced in Paragraph 6, above.
8. On April 19, 2011, Pennsylvania Department of Environmental Protection (“PADEP”) Secretary Michael Krancer requested that oil and gas well operators to stop transporting wastewater from shale gas extraction activities to CWT facilities and Publicly Owned Treatment Works that could not achieve certain effluent standards. Respondents had been accepting such wastewater for treatment at the Facilities but had also accepted, and still accept, wastewater from operators of conventional oil and gas wells for treatment. Wastewater from conventional oil and gas production was not the subject of Secretary Krancer’s request. At present, Respondents are not accepting wastewater from shale gas extraction activities for treatment at the Facilities.
9. For purposes of this AOCC, the term “unconventional oil and gas” shall mean gas from geological shale formations existing below the base of the Elk Sandstone or its geologic

9. For purposes of this AOCC, the term “unconventional oil and gas” shall mean gas from geological shale formations existing below the base of the Elk Sandstone or its geologic equivalent stratigraphic interval where oil and/or natural gas generally cannot be produced at economic flow rates or in economic volumes except by vertical or horizontal well bores stimulated by hydraulic fracture treatments or by using multilateral well bores or other techniques to expose more of the formation to the well bore.

III. FINDINGS OF FACT AND JURISDICTIONAL ALLEGATIONS

10. The findings of fact, jurisdictional allegations, and conclusions of law identified in the Administrative Orders, Docket Nos. CWA-03-2011-0269DN, CWA-03-2011-0273DN, and CWA-03-2011-0274DN, issued to HRT and PBT on September 28, 2011, are incorporated herein by reference. Respondents neither admit nor deny the findings of fact, alleged violations, and conclusions of law contained or referenced in this AOCC.
11. Respondents admit the jurisdictional allegations contained in this AOCC and agree not to contest EPA’s jurisdiction to issue and enforce the terms of this AOCC.

IV. CONCLUSIONS OF LAW

12. As described in the Findings of Fact and Jurisdictional Allegations referenced in Paragraph 10, above, EPA concludes that the elements of Section 309(a)(3) of the CWA, 33 USC § 1319(a)(3) are satisfied.

V. ORDER FOR COMPLIANCE

WHEREAS, when the merger referenced in Paragraph 3 occurs, Respondent FRS commits to making significant investments in evaporative based technologies at each of the Facilities that would enable Respondent FRS to treat such wastewater from unconventional oil and gas extraction activities such that all discharges from the Facilities will contain levels of Total Dissolved Solids (“TDS”) that do not exceed a monthly average of 500 mg/L.

WHEREAS, Respondents shall submit applications for a PADEP Waste Management General Permit for the Processing and Beneficial Use of Oil and Gas Liquid Waste (“WMGR123”) for any Facility at which Respondents wish to accept wastewater from unconventional oil and gas extraction activities for recycle or reuse.

WHEREAS, Respondents shall apply to PADEP for Water Quality Management (“WQM”) Permits, where applicable, prior to the construction and installation of new treatment equipment at any of the Facilities in accordance with all applicable requirements in 40 C.F.R. Part 122, and the Pennsylvania Code.

Therefore, this 8th day of May, 2013, Respondents are hereby ORDERED, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), and do

consent to the following:

13. Respondents shall apply to PADEP for timely renewal or modification of the NPDES Permit at each of the Facilities and request that the renewal or modification of each NPDES Permit include an effluent limit for TDS not to exceed a monthly average of 500 mg/L. Complete applications shall be submitted, with copies or notices of the applications sent to EPA, according to the following schedule:
 - a. For the Josephine Facility: on or before May 15, 2013;
 - b. For the Creekside Facility: on or before May 31, 2013; and
 - c. For the Franklin Facility: on for before August 28, 2013.
14. Respondent's applications for NPDES Permit renewals or modifications at each of the Facilities shall comply with the requirements of the CWA and the regulations promulgated thereunder.
15. Respondents agree that discharges from the Facilities will be considered "new and expanding mass loadings" as defined in 25 Pa. Code § 95.10 with respect to effluent limits for the constituents set forth in § 95.10(b)(3), if and when PADEP renews the Facilities' NPDES permits.
16. Respondents shall not discharge from any Facility, wastewater from unconventional oil and gas extraction activities until PADEP has issued, and Respondents are in full compliance with, WQM Permits and renewed or modified NPDES Permits at such Facility containing effluent limitations for TDS not to exceed a monthly average of 500 mg/L and all other requirements of this AOCC.
17. Respondents shall ensure that after the water treatment equipment required by the WQM Permits is installed and operational, discharges from the Facilities will contain levels of TDS not to exceed a monthly average of 500 mg/L, in addition to all other applicable requirements.
18. Respondents shall continue to comply with the applicable NPDES Permits under which each of the Facilities currently operates, as well as the terms of the renewed or modified NPDES Permits referenced in Paragraph 13, above.
19. For a period of six (6) months following the initial acceptance of wastewater from unconventional oil and gas extraction activities at each Facility Respondents shall conduct biweekly composite sampling, of a minimum of 8-hour duration, of effluent at each Facility for the analysis for TDS, chloride, bromide, sulfate, Gross Alpha, Radium 226 and 228 and Uranium. Samples shall be analyzed by an accredited laboratory using EPA-approved

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methods. Respondents shall submit to EPA and PADEP the additional monitoring data of their effluent with their monthly Discharge Monitoring Reports to characterize water quality.

20. Respondents' failure to complete or comply with any requirement of this AOCC shall be deemed a violation of this Order.

21. All notices and submissions to EPA required under this AOCC shall be sent to:

Rebecca K. Crane
Water Protection Division
NPDES Enforcement Branch
U.S. Environmental Protection Agency
Region III (Mail Code 3WP42)
1650 Arch Street
Philadelphia, PA 19103-2029
(215) 814-2389
Mail-in email database info to be inserted

and,

Chief, Operations Section
Pennsylvania Department of Environmental Protection
400 Waterfront Drive
Pittsburgh, PA 15222

All notices required to be sent to FRS shall be sent to:

Devesh Mittal
FRS
One Four Coins Drive
Canonsburg, PA 15317
(724) 746-5301 x281

and

Paul Hart
FRS Creekside Facility
5035 Route 110
PO Box 232
Creekside, PA 15732
(724) 349-8600

*In re: Fluid Recovery Services, LLC; Hart Resource Technologies, Inc.;
& Pennsylvania Brine Treatment, Inc.*
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and

Lawrence A. Demase, Esquire
Reed Smith LLP
225 Fifth Avenue, Suite 1200
Pittsburgh, PA 15222
(412) 288-4050

and

Kevin J. Garber, Esquire
Babst Calland Clements & Zomnir, P.C.
Two Gateway Center, Sixth Floor
Pittsburgh, PA 15222
(412) 394-5404

22. All submissions provided pursuant to this Order shall be signed by the appropriate Respondent(s) and shall include the following certification:

"I certify that the information contained in or accompanying this submission is true, accurate and complete to the best of my knowledge. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

VI. GENERAL PROVISIONS

23. Respondents waive any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondents may have with respect to any issue of fact or law set forth in this Order, including, but not limited to, any right of judicial review of the Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.
24. Respondents reserve their rights to contest liability in any subsequent action filed by EPA to seek penalties for a violation of this Order, and reserve their rights to contest liability in any subsequent action filed by EPA for any violations alleged in the Findings above. However, Respondents waive their rights to claim that the Order was invalid or that EPA lacked authority to issue this Order or any of the Order's terms.
25. This AOCC shall not relieve Respondents of their obligations to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. This AOCC does not constitute a waiver, suspension or modification of the requirements of the CWA. To the extent that any requirement of this AOCC is in conflict with any new or modified

permit or related State or federal law or regulation, then Respondents shall comply with the new or modified permit, or related State or federal law or regulation, unless the new or modified permit term(s), or related State or federal law or regulation, is less restrictive, and in which case Respondents shall comply with the terms of this AOCC. In the event of such a conflict, Respondents shall so notify EPA within thirty (30) days pursuant to the notification provisions of this AOCC. Such notification shall, at a minimum identify: (1) the new or modified permit or related State or federal law or regulation; (2) the AOCC requirement contrary thereto; (3) the basis and reason why Respondents have determined that a conflict exists; and (4) steps the Respondents are taking to ensure compliance with the new or modified permit, or related State or federal law or regulation.

26. Issuance of this AOCC is intended to address the violations described by the Administrative Orders for Compliance referenced in Paragraph 5 of this AOCC. EPA reserves the right to commence action against any person, including Respondents, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Further, EPA reserves any rights and remedies available to it under the CWA, 33 U.S.C. §§ 1251- 1387, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction. In addition, issuance of this Order is subject to all limitations on the scope of resolution and to the reservation of rights set forth in 40 C.F.R. § 22.18(c) of the Consolidated Rules of Practice.
27. EPA reserves all existing inspection and information gathering authority otherwise available to EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute or law.
28. Respondents' compliance with the terms of this Order shall not relieve Respondents of the obligation to comply with the CWA or any other federal, state or local law or regulation; nor does this AOCC constitute a waiver or modification of the terms or conditions of any issued permit.
29. Nothing in this AOCC shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violations of this AOCC or of the statutes and regulations upon which this AOCC is based or for Respondents' violation of any applicable provision of law.
30. Respondents reserve all defenses to any action asserted or taken by EPA under its reservations in this AOCC or otherwise.

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31. This AOCC, in conjunction with the CAFOs referenced in Paragraph 6, terminates and closes the following Administrative Orders for Compliance issued to HRT and PBT on September 28, 2011:
 - a. Docket No.: CWA-03-2011-0269DN;
 - b. Docket No.: CWA-03-2011-0273DN; and
 - c. Docket No.: CWA-03-2011-0274DN.
32. Respondents' undersigned representatives certify that they are fully authorized by the party represented to enter into the terms and conditions of this AOCC and to execute and legally bind that party to it.
33. All of the terms and conditions of this AOCC together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this AOCC, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire AOCC shall be null and void.
34. When the merger referenced in Paragraph 3 occurs, this AOCC's requirements shall apply to any and all successors and assigns of FRS.
35. This AOCC and all of FRS's obligations hereunder shall terminate after the six (6) months monitoring set forth in paragraph 19 above provided that PADEP has issued renewed or modified NPDES permits containing, among other things, effluent limitations for TDS not to exceed a monthly average of 500 mg/L for each of the Facilities.

VI. EFFECTIVE DATE

36. The effective date of this Order shall be the date that the fully executed Order is received by Respondents.

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& Pennsylvania Brine Treatment, Inc.
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FOR RESPONDENT FLUID RECOVERY SERVICES, LLC



Date: 5-1-13

Paul Hart, President
Fluid Recovery Services, LLC

In re: Fluid Recovery Services, LLC; Hart Resource Technologies, Inc.;
& Pennsylvania Brine Treatment, Inc.
Docket No. CWA 03-2013-0051DN

FOR RESPONDENT HART RESOURCE TECHNOLOGIES, INC.

A handwritten signature in black ink, appearing to read "Paul Hart", is written over a horizontal line.

Date: 5-1-13

Paul Hart, President
Hart Resource Technologies, Inc.

In re: Fluid Recovery Services, LLC; Hart Resource Technologies, Inc.;
& Pennsylvania Brine Treatment, Inc.
Docket No. CWA 03-2013-0051DN

FOR RESPONDENT PENNSYLVANIA BRINE TREATMENT, INC.

A handwritten signature in cursive script, reading "Paul Hart", is written over a horizontal line.

Date: 5-1-13

Paul Hart, President
Pennsylvania Brine Treatment, Inc.

In re: Fluid Recovery Services, LLC; Hart Resource Technologies, Inc.;
& Pennsylvania Brine Treatment, Inc.
Docket No. CWA 03-2013-0051DN

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGION III

A handwritten signature in black ink, appearing to read "Jon M. Capacasa", written over a horizontal line.

Jon M. Capacasa, Director
Water Protection Division