

COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature: <b>X</b></p> <p><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery _____</p> <p>D. Is delivery address different from item? <input checked="" type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p style="text-align: center;"><b>PO BOX 603 Shelby MT 59474 EINFL FEB 20 2009 F</b></p> <p>Service Type  <input checked="" type="checkbox"/> Certified Mail    <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered    <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail    <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>1. Article Addressed to:</p> <p><b>William M. Fulton Registered Agent for Fulton Fuel Company 127 Main Street Shelby, MT 59474</b></p>	
<p>CWA-08-2009-0006</p>	
<p>2. Article Number (Transfer from service label)</p> <p><b>7004 1350 0001 5669 8650</b></p>	
PS Form 3811, February 2004	Domestic Return Receipt 102595-02-M-1540

**EPA** Environmental Protection Agency  
**REGION 8**  
 1595 Wynkoop Street  
 Denver, CO 80202-1129  
*BEAUF-L-Mat*

RETURN RECEIPT REQUESTED

William M. Fulton  
 Registered Agent for Fulton Fuel Company  
 127 Main Street  
 Shelby, MT 59474

7004 1350 0001 5669 8650



**CERTIFIED MAIL™**

**CERTIFIED MAIL**

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**OFFICIAL USE**

Postage	\$ <i>Fixed 6</i>	Mark Here <i>JMF</i>
Certified Fee	<i>mailed 2/19/09</i>	
Return Receipt Fee (Endorsement Required)	<i>w/enclosures</i>	
Restricted Delivery Fee (Endorsement Required)		

William M. Fulton  
 Registered Agent for Fulton Fuel Company  
 127 Main Street  
 Shelby, MT 59474

PS Form 3800, June 2002 See Reverse for Instructions

0598 6995 1000 05ET 4002

\$06.4  
 PS Form 3800

7008 3230 0003 0730 5496

LIBRAT TOP OF ENVELOPE TO THE RIGHT  
YOUR ADDRESS, FOLD AT DOTTED LINE

**CERTIFIED MAIL**<sup>®</sup>



7008 3230 0003 0730 5496

United States  
Environmental Protection Agency  
REGION 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

U.S. BUSINESS - PENALTY FOR PRIVATE USE - \$300

WILLIAM M. FULTON  
REGISTERED AGENT FOR FULTON FUEL COMPANY  
127 MAIN STREET #603  
P.O. BOX 603  
SHELBY, MONTANA 59474

PS Form 3800, August 2006

See Reverse for Instructions

U.S. Postal Service  
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**OFFICIAL USE**

Postage	\$
Certified Fee	2nd time mailed
Return Receipt Fee (Endorsement Required)	1st Mailing
Restricted Delivery Fee (Endorsement Required)	Returned to sender

Postmark  
Here

jmw

**REASON CHECKED**

No Postage, Late Fee, or Address Change

Postage Due

Undelivered

Incomplete or Missing Postage

Return to Sender

Other

WILLIAM M. FULTON  
REGISTERED AGENT FOR FULTON FUEL COMPANY  
127 MAIN STREET #603  
P.O. BOX 603  
SHELBY, MONTANA 59474

RETURN RECEIPT  
REQUESTED

CERTIFIED MAIL

**SENDER: COMPLETE THIS SECTION**

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MAR 23 2009

WILLIAM M. FULTON  
REGISTERED AGENT FOR FULTON FUEL COMPANY  
127 MAIN STREET #603  
P.O. BOX 603  
SHELBY, MONTANA 59474

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from Item 1?  Yes  
If YES, enter delivery address below:  No

Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2nd Time Mailed

E

2. Article Number

\*\*\* RETURN OF SERVICE \*\*\*

IN THE MONTANA DISTRICT COURT FOR ENFORCEMENT ATTY COUNTY

CASE NAME: Personal

US ENVIRONMENTAL PROTECTION AG  
VS  
FULTON, WILLIAM M. JR

CASE NO: CV-09-161

NOTICE RECEIVED: 05/22/09

STATE OF Montana

SHERIFF COUNTY

I certify that I served a copy of: SUMMON/COMPLAIN

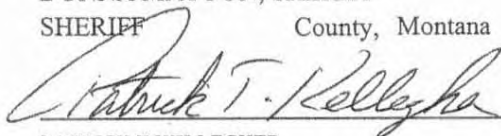
- Petition and Original Notice
- Modification/Application and Notice
- Order to Show Cause
- Order Filed \_\_\_\_\_
- Writ \_\_\_\_\_
- Other \_\_\_\_\_

Served BILL FULTON at SHELBY, MT on 05/22/09 19:00

NOTE:(Diligent Search, etc.)

Processing : 0.00  
 Mileage : 0.00  
 Trust/Copy : 0.00  
 MISC. : 0.00  
 TOTAL : 0.00

DONNA MATOON, SHERIFF  
SHERIFF County, Montana



PATRICK T KELLEGHER  
Signature

Title

Fees charged to/paidby Atty/Party: US ENVIRONMENTAL PROTECTION AG

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addressee  
**X**

B. Received by (Printed Name) C. Date of Delivery

1. Article Addressed to:  
 Mr. William M. Fulton, Jr., Registered Agent  
 Fulton Fuel Company  
 127 Main Street  
 P.O. Box 603  
 Shelby, MT 59474

D. Is delivery address different from item 1?  Yes  
 YES, enter delivery address below:  No

JUL 10 2009 C

Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number (Transfer from service label) 7008 1830 0000 5157 1772

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

REGION 8  
 1595 Wynkoop Street  
 Denver, CO 80202-1129  
 \$ ENF-LMW  
 OFFICIAL BUSINESS - PENALTY FOR PRIVATE USE - \$300

Mr. William M. Fulton, Jr., Registered Agent  
 Fulton Fuel Company  
 127 Main Street  
 P.O. Box 603  
 Shelby, MT 59474

RECEIVED  
 JUL 10 2009  
 7008 1830 0000 5157 1772

**CERTIFIED MAIL™**  
 7008 1830 0000 5157 1772

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**OFFICIAL USE.**

Postage	\$ <i>Filed &amp; mailed via</i>	
Certified Fee	<i>1ST CLASS MAIL</i>	
Return Receipt Fee (Endorsement Required)	<i>and Certified mail as before</i>	Postmark Here <i>pu</i>
Restricted Delivery Fee (Endorsement Required)		

Mr. William M. Fulton, Jr., Registered Agent  
 Fulton Fuel Company  
 127 Main Street

2221 2515 0000 DEPT 9  
 pd 7-11

Note - Return Order

\*\*\* RETURN OF SERVICE \*\*\*

IN THE MONTANA DISTRICT COURT FOR

COUNTY

CASE NAME: Personal

US EPA  
vs  
FULTON, WILLIAM M. JR

CASE NO: CV-09-293

NOTICE RECEIVED: 08/11/09

STATE OF Montana

SHERIFF COUNTY

I certify that I served a copy of: ORDER/PETITION

- Petition and Original Notice
- Modification/Application and Notice
- Order to Show Cause
- Order Filed \_\_\_\_\_
- Writ \_\_\_\_\_
- Other \_\_\_\_\_

Served BILL FULTON

at 127 MAIN  
SHELBY, MT 59474

on 08/18/09 14:10

NOTE:(Diligent Search, etc.)

Processing : 0.00  
 Mileage : 0.00  
 Trust/Copy : 0.00  
 MISC. : 0.00  
 TOTAL : 0.00

DONNA MATOON, SHERIFF  
 SHERIFF County, Montana

SUNDBOIST, JEFF

Signature

Title

Fees charged to/paidby Atty/Party: US EPA

**DOUGLAS C. ALLEN**

*Attorney at Law*  
P. O. Box 873  
153 Main Street  
Shelby, MT 59474

(406) 424-8020  
(406) 434-5522 (fax)

**FACSIMILE TRANSMITT/**

DATE: 3/4/2010

TIME: 4:00

TO: EPA

ATTENTION: Marc Weiner

FAX NUMBER: 303 - 312 - 7202

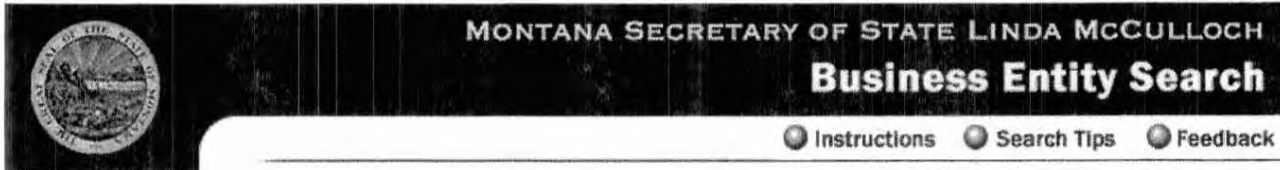
IF YOU DO NOT RECEIVE ALL OF THE FOLLOWING PAGES, PLEASE CALL (406) 424-8020. THANK YOU!

Total number of pages, including this cover page: 9

Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CONFIDENTIALITY NOTICE: The page (s) comprising this facsimile transmission contain confidential information and also me be legally privileged as an attorney-client communication. This information is intended solely for the use by the individual (s) and/or entity (ies) names as the recipient hereof. If you are not the intended recipient, be aware that any disclosure, copying, or distribution or use of the contents of this transmission is prohibited. If you have received this transmission in error, please notify us by telephone immediately so we may arrange to receive this transmission at no cost to you.



▶ Data Current as of...

If you are ordering a Certificate of Fact or Certificate of Existence, please make sure the Foreign/Domestic Corporation or Limited Liability Company is in "Good Standing".  
Enter the name of the business, and check to see whether their annual report was filed in the current year.

We are not able to provide a Certificate of Fact or Certificate of Existence unless the current annual report is filed.

If you would like to purchase a Certificate of Existence for this business entity, select the button below.  
You will be assessed a \$5.00 fee for this service.

Get Certificate of Existence

If you would like to purchase information on the principals (i.e., officers, directors, members, managers, partners, etc) associated with this entity, select the button below. You will be assessed \$2.00 for each search you perform.

Get Principals

If you would like to purchase a Certificate of Fact for this business entity, select the button below. You will be assessed a \$15.00 fee for this service.

Get Certificate of Fact

Do another Search

Search

**Name:** FULTON FUEL COMPANY  
**ID #:** D053211  
**Type:** GENERAL BUSINESS  
**Jurisdiction State:** MT  
**Status:** ACTIVE  
**Status Reason:** GOOD STANDING

### Status Dates

**Expiration Date:**  
**Date of Incorporation:** 08/31/1981  
**Last AR Filed:** 04/07/2009  
**Suspension:**  
**Inactive Date:**  
**Diss/Widthdr/Revoke:**

### Additional Info

**Term:** PERP  
**Shares:** 5000.00  
**Purpose Code:** GAS,OIL,PETROLEUM-GENERAL

### Agent

**Registered Agent:** WILLIAM M FULTON  
**Address 1:** 127 MAIN STREET  
**Address 2:** BOX 603  
**City:** SHELBY  
**State:** MT  
**Zip:** 59474-0000

7004 1350 0001 5669 9459

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**OFFICIAL USE**

Postage	\$ <i>Filed 5'</i>	Postmark Here
Certified Fee	<i>mailed</i>	
Return Receipt Fee (Endorsement Required)	<i>W/ Enclosures</i>	
Restricted Delivery Fee (Endorsement Required)	<i>2/14/09 JMS</i>	
Total Postage & Fees	\$ _____	
Richard L. Beatty Attorney at Law 153 Main Street Shelby, MT 59474		

PS Form 3800, June 2002

See Reverse for Instructions

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Richard L. Beatty  
Attorney at Law  
153 Main Street  
Shelby, MT 59474

*CWA-08-2009-0006*

2. Article Number

(Transfer from service label)

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature <input checked="" type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee	<i>[Signature]</i>
B. Received by (Printed Name)	C. Date of Delivery
<i>R. Beatty</i>	<i>2/23</i>
D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input checked="" type="checkbox"/> No	

*ENF-2 FEB 20 11:19 G*

3. Service Type

<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail
<input checked="" type="checkbox"/> Registered	<input type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

7004 1350 0001 5669 9459

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540





**RICHARD L. BEATTY**

ATTORNEY AT LAW

153 MAIN STREET  
P. O. BOX 904  
SHELBY, MT 59474

Telephone: (406) 434-5518  
Fax: (406) 434-5522  
E-mail: beatlaw@3rivers.net

December 21, 2009

Honorable Elyana Sutin, Regional Judicial Officer (8RC)  
U.S. Environmental Protection Agency, Region VIII  
1595 Wynkoop St.  
Denver, CO 80202-1129

Re: *In the Matter of Fulton Fuel Company*  
Docket No. CWA-08-2009-0006

Dear Judge Sutin:

I received counsel Weiner's letter of December 17, 2009 addressed to you and the Supplemental Declaration of Jane Nakad in the mail this date. In Mr. Weiner's letter it appears that you had requested information as to my status and I am responding to that so that both you and Mr. Weiner will be apprised of that status.

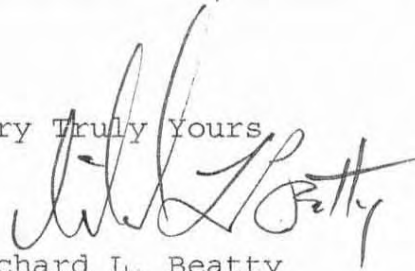
As Counsel stated, I represented Fulton Fuel Company in certain discussions regarding the Clean Water Act Response, and in that respect had telephone conversations with Counsel Weiner and Jane Nakad as to how to respond to the request. Sometime later, the Complaint in the above stated matter was sent to me via certified mail. I accepted the certified mail as I always do with any matters of importance sent to me in that fashion. However at that time I was not, and presently am not, the agent for service of process for Fulton Fuel Company. Therefore my receipt of that Complaint should not be construed as service upon that company as I am without authority to accept such service.

After reviewing the contents of the certified mail I delivered the Complaint to William Fulton, President of Fulton Fuel Company and briefly discussed its contents. I was advised at that time that he intended to retain an attorney more knowledgeable in environmental matters than I. Mr. Weiner contacted me sometime subsequent to that occasion inquiring as to why Fulton Fuel Company had not accepted its certified mail. My recollection is that Mr. Fulton had been out of town for an

extended length of time but I was not aware that the mail had not been picked up.

I have had no contact with Mr. Fulton since June of 2009. I have not been retained to represent Mr. Fulton or Fulton Fuel Company in the above matter. Accordingly, my acceptance of certified mail sent to me should not be construed by anyone as being effective service of process upon, or notice to, either the individual or that company.


Very Truly Yours

A handwritten signature in cursive script, appearing to read "Richard L. Beatty". The signature is written in dark ink and is positioned above the printed name.

Richard L. Beatty

RLB/tf

Cc: Marc D. Weiner  
Enforcement Attorney  
1595 Wynkoop Street  
Denver, CO 80202-1129

Fulton Fuel and William Fulton 

Marc Weiner to: Reneé Coppock, Dick Beatty

Bcc: Jane Nakad

04/28/2009 03:42 PM

---

Reneé and Dick:

Never heard back from either of you about your client, the administrative penalty complaint (APO) that was sent and received by certified mail by you, Dick, and whether there was interest from your client in working out a penalty resolution to this matter. If I do not hear from either of you by the end of this week - I will assume that your client has no interest in pursuing that route. There are many more potential CWA OPA SPCC violations for the facilities and tank batteries that were sold by Fulton Fuel than were cited in the APO.

Sincerely,

Marc

Marc Weiner

Enforcement Attorney and Legal Internship Coordinator

U.S. EPA, Region 8 (Mail Code: 8ENF-L)

1595 Wynkoop St.

Denver, CO 80202-2466

Tel: (303) 312-6913

Fax: (303) 312-7202

NOTICE: This communication may contain privileged or other confidential information. If you are not the intended recipient, or believe you have received this communication in error, please delete the copy you received, and do not print, copy, retransmit, disseminate or otherwise use the information. Thank you.

Fulton Fuel Motion for Default T/O CWA -08-2009-

**SENDER: COMPLETE THIS SECTION**

**COMPLETE THIS SECTION ON DELIVERY**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Richard L. Beatty, Esq.  
 153 Main Street  
 P.O. Box 904  
 Shelby, MT 59474

A. Signature *R Beatty* <sup>0006</sup>  
 Agent  
 Addressee

B. Received by (Printed Name) *R Beatty* C. Date of Delivery *7/13*

D. Is delivery address different from item 1?  Yes  
 No  
 If YES, enter delivery address below:

JUL 10 2009

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number  
 (Transfer from service label)

7008 1830 0000 5157 1819

7008 1830 0000 5157 4438

<b>U.S. Postal Service</b> <b>CERTIFIED MAIL RECEIPT</b> <small>(Domestic Mail Only; No Insurance Coverage Provided)</small>	
<small>For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a></small>	
<b>OFFICIAL USE</b>	
Postage \$ _____ Certified Fee _____ Return Receipt Fee (Endorser's Required) _____ Restricted Delivery Fee (Endorser's Required) _____ Total Postage & Fees \$ _____	Postmark Here
SENT TO NAME or PO/E OFFICE ZIP Code	Richard L. Beatty Attorney at Law 153 Main Street Shelby, MT 59474 Docket No.: CWA-08-2009-0006

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	A. Signature <i>Richard L. Beatty</i> <input type="checkbox"/> Agent X <input checked="" type="checkbox"/> Addressee
1. Article Addressed to:  <div style="text-align: right;">AUG 20 2009</div> <p>Richard L. Beatty                      Attorney at Law                      153 Main Street                      Shelby, MT 59474                      Docket No.: CWA-08-2009-0006</p>	B. Received by (Printed Name) <i>Richard Beatty</i> C. Date of Delivery <i>8/20/09</i> D. Is delivery address different from label? <input checked="" type="checkbox"/> Yes If YES, enter delivery address below: <i>PO Box 904                  Shelby MT 59474</i>
2. Article Number <small>(Transfer from service label)</small>	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes
7008 1830 0000 5157 4438	

7008 3230 0003 0729 5162

**U.S. Postal Service**  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only. No Insurance Coverage Provided.)  
 For delivery information visit our website at [www.usps.gov](http://www.usps.gov)

**OFFICIAL USE**

Postage \$ 11.20

Certified Fee \_\_\_\_\_

Return Receipt Fee (Return Receipt Required) \_\_\_\_\_

Restricted Delivery Fee (Order) \_\_\_\_\_

**Richard L. Beatty**  
 Title Attorney at Law  
 155 Main Street  
 South, ME 05474

BUCKET NO.: CWA-00-2009-0000

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature <u>Richard L. Beatty</u> <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. <u>Richard L. Beatty</u> C. Date of Delivery <u>11/24</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes          If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to:</p> <p><b>Richard L. Beatty</b>          Attorney at Law          155 Main Street          South, ME 05474</p> <p>BUCKET NO.: CWA-00-2009-0000          NOV 20 2009</p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article No. (Transfer) <u>7008 3230 0003 0729 5162</u></p>	<p><u>order</u></p>

1 Douglas C. Allen  
Attorney at Law  
2 153 Main Street  
P.O. Box 873  
3 Shelby, MT 59474  
Telephone: (406) 424-8020  
4 Facsimile: (406) 434-5522

5  
6  
7 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
8 REGION 8

9 IN THE MATTER OF: \*  
\* Docket No. CWA-08-2009-0006  
10 FULTON FUEL COMPANY \*  
127 Main Street \* AFFIDAVIT OF WILLIAM M.  
11 Shelby, MT 59474 \* FULTON, JR.

12 State of Montana )  
13 :ss  
14 County of Toole )

William M. Fulton, Jr. Being first duly sworn states:

15 1. I am the President of Fulton Fuel Company, the Respondent  
16 in these proceedings.

17  
18 2. On February 29, 2004 a small crude oil release occurred  
19 from a fiberglass flowline buried in rock several feet under-  
20 ground under Fred and George Creek in Toole County, Montana. The  
21 facts concerning the nature of the spill and demonstrating the  
22 rapidly initiated, sustained and successful response and  
23 remediation measures implemented and paid for by Fulton Fuel  
24 Company are set forth by Fulton Fuel Company's Response to Order  
25 to Supplement the record and to Show Cause filed herein on or  
26 about January 4, 2010. The facts set forth therein and demon-  
27 strated through the exhibits attached thereto are true and  
28 correct to the best of my knowledge, information and belief.

1           3. The small flowline from which the spill occurred was  
2 installed several feet underground by Western Natural Gas Company  
3 of Shelby, Montana in a bed of rock. Prior to the leak which  
4 occurred, the location and situation of the flowline was impossi-  
5 ble to determine or detect by Fulton Fuel Company. The leak which  
6 occurred was caused by acts and omissions of Western Natural Gas  
7 Company some years prior to acquisition of the property by Fulton  
8 Fuel Company.

9  
10           4. I am personally acquainted with the geography and topog-  
11 raphy in the area of the Sweetgrass Hills where Fred and George  
12 Creek meanders through rugged hill country in rural northern  
13 Toole County, Montana. Fred and George Creek is a small seasonal  
14 creek which runs dry each year below the site of the spill. It is  
15 not even remotely navigable and its waters do not reach any  
16 navigable stream. Fulton Fuel Company's storage tank facility was  
17 located some distance away from the spill at a place lower than  
18 Fred and George Creek. No spill occurred from that storage  
19 facility. Had one occurred it could not have reasonably been  
20 expected to reach navigable waters of the United States.

21           5. Subsequent to the spill which occurred February 29, 2004,  
22 Fulton Fuel Company retained an attorney, Renee Coppock of the  
23 Crowley Fleck Law Firm, 500 Transwestern Plaza II, 490 North 31st  
24 Street, Billings, Montana 59101, to handle all legal matters  
25 pertaining to environmental issues with local, state and federal  
26 governments arising out of the spill. Ms. Coppock arranged for  
27 and monitored the remedial, testing and reporting activities of  
28 Hydro Solutions Inc., corresponded with state and federal  
agency's and was involved in all aspects of Fulton Fuel Company's



1 legal, remedial, and restoration actions discussed in Fulton Fuel  
2 Company's Response to Order to Supplement the Record and to Show  
3 Cause herein and demonstrated through the exhibits attached  
4 thereto.

5  
6 6. Specifically Renee Coppock was involved in communica-  
7 tions, including telephone conferences with EPA officials in-  
8 volved in this case, and I am informed and believe and therefore  
9 state that she received a copy of Hydro Solutions, Inc. "Response  
10 to United States Environmental Protection Agency Expedited  
11 Information Request for Fulton Fuel Crude Oil Release Into Fred  
12 and George Creek, Toole County, Montana, dated October 3, 2007.  
13 That Response sets forth facts pertaining to allegations now set  
14 forth in the Administrative Complaint in this case and is at-  
15 tached to this Affidavit marked Exhibit 10. I do not handle any  
16 legal matters for Fulton Fuel Company. I believed that Renee  
17 Coppock transmitted Exhibit 10 to the EPA and was handling all  
18 legal matters arising out of the EPA's investigation and Adminis-  
19 trative Complaint and would file any legal papers required and  
20 participate in any hearings to be held herein. I believed such  
21 facts to be true until I was advised on December 21, 2009 by  
22 Douglas C. Allen that Renee Coppock had not appeared in this  
23 matter at which time I requested and authorized Mr. Allen to  
24 appear and represent Fulton Fuel Company in this matter.

25 

26 \_\_\_\_\_

1 Subscribed and sworn to before me this 5<sup>th</sup> day of March,  
2 2010.

3  
4 (SEAL)

Tennile Frydenlund  
Print Name Tennile Frydenlund  
Notary Public for the State of MT  
Residing at Shelby, MT 59474  
My commission expires 07/25/2012

5  
6  
7  
8 **CERTIFICATE OF SERVICE**

9 I hereby certify that on the 5th day of March, 2010, I  
10 mailed a true and correct copy of the foregoing document, postage  
11 prepaid, to the following:

11 Marc D. Weiner  
12 Enforcement Attorney  
13 1595 Wynkoop Street  
14 Denver, CO 80202-1129

14 Tina Artemis  
15 Regional Hearing Clerk  
16 US Environmental Protection Agency, Region 8  
17 1595 Wynkoop Street  
18 Denver, CO 80202-1129  
19 Fax: (303)-312-6859

20  
21  
22  
23  
24  
25  
26  
27  
28  
Douglas C. Allen

JURISDICTIONAL DETERMINATION  
U.S. Army Corps of Engineers

Revised 8/13/04

DISTRICT OFFICE: Omaha District - Montana Office

FILE NUMBER: 2004 90 737

PROJECT LOCATION INFORMATION:

State: MT  
County: Toole  
Center coordinates of site (latitude/longitude):  
Approximate size of area (parcel) reviewed, including uplands: 1/2 acres  
Name of nearest waterway: Fred and George Creek  
Name of watershed: Milk River

JURISDICTIONAL DETERMINATION

Completed: Desktop determination  Date: 09 November 2004  
Site visit(s)  Date(s):

Jurisdictional Determination (JD):

Preliminary JD - Based on available information,  there appear to be (or)  there appear to be no "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).  
Check all that apply:

There are "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:

There are "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:

There are "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.

Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

BASIS OF JURISDICTIONAL DETERMINATION:

A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":

The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":

(1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

(2) The presence of interstate waters including interstate wetlands.

(3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

(i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

(ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

(iii) which are or could be used for industrial purposes by industries in interstate commerce.

(4) Impoundments of waters otherwise defined as waters of the US.

(5) The presence of a tributary to a water identified in (1) - (4) above.

(6) The presence of territorial seas.

(7) The presence of wetlands adjacent to other waters of the US, except for those wetlands adjacent to other wetlands.

Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above). If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:

Fred and George Creek is tributary to MINERS Coulee, A tributary of the international and -  
inter Milk River, hence a tributary of the interstate and Navigable Missouri River.

**Lateral Extent of Jurisdiction:** (Reference: 33 CFR parts 328 and 329)

- Ordinary High Water Mark indicated by:
- clear, natural line impressed on the bank
  - the presence of litter and debris
  - changes in the character of soil
  - destruction of terrestrial vegetation
  - shelving
  - other:
- High Tide Line indicated by:
- oil or scum line along shore objects
  - fine shell or debris deposits (foreshore)
  - physical markings/characteristics
  - tidal gages
  - other:
- Mean High Water Mark indicated by:
- survey to available datum;  physical markings;  vegetation lines/changes in vegetation types.
- Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

**Basis For Not Asserting Jurisdiction:**

- The reviewed area consists entirely of uplands.
- Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
  - Artificially irrigated areas, which would revert to upland if the irrigation ceased.
  - Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
  - Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
  - Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
  - Isolated, intrastate wetland with no nexus to interstate commerce.
  - Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
  - Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
  - Other (explain):

**DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):**

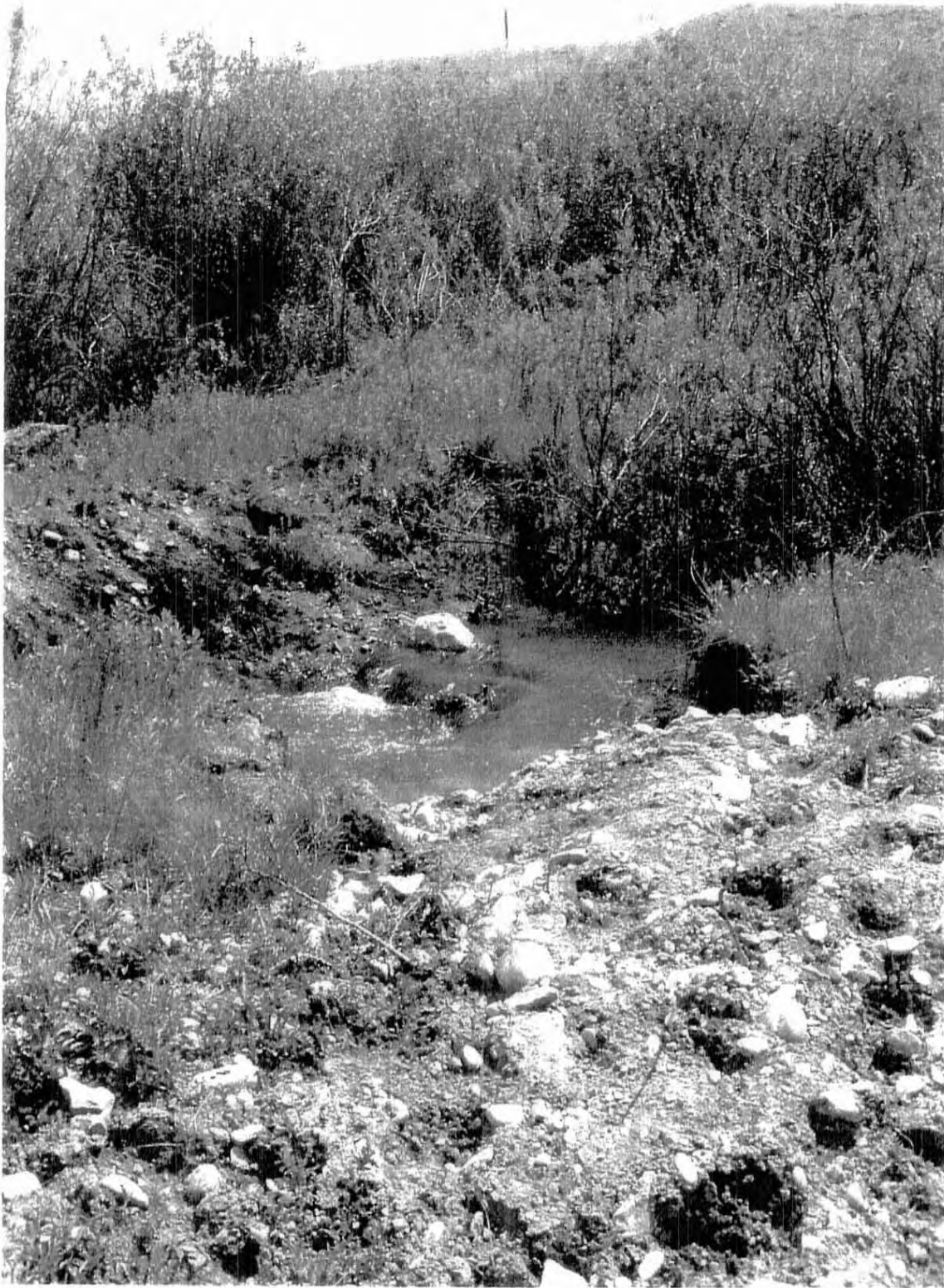
- Maps, plans, plots or plat submitted by or on behalf of the applicant.
- Data sheets prepared/submitted by or on behalf of the applicant.
- This office concurs with the delineation report, dated \_\_\_\_\_, prepared by (company): \_\_\_\_\_
  - This office does not concur with the delineation report, dated \_\_\_\_\_, prepared by (company): \_\_\_\_\_
- Data sheets prepared by the Corps.
- Corps' navigable waters' studies:
- U.S. Geological Survey Hydrologic Atlas:
- U.S. Geological Survey 7.5 Minute Topographic maps: "Fey Lakes" USGS Quad
- U.S. Geological Survey 7.5 Minute Historic quadrangles:
- U.S. Geological Survey 15 Minute Historic quadrangles:
- USDA Natural Resources Conservation Service Soil Survey:
- National wetlands inventory maps:
- State/Local wetland inventory maps:
- FEMA/FIRM maps (Map Name & Date):
- 100-year Floodplain Elevation is: \_\_\_\_\_ (NGVD)
- Aerial Photographs (Name & Date): Submitted by Applicant on 15 Oct 2004
- Other photographs (Date):
- Advanced Identification Wetland maps:
- Site visit/determination conducted on:
- Applicable/supporting case law:
- Other information (please specify):

PREPARER

DATE

<sup>1</sup>Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup>The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.



View to the south of the flowing stream at the approximate southern end of the planned excavation area. The ground disturbance (center left) was caused by the excavation of the fiberglass pipe in order to seal off the ends to prevent further release.

Photo taken: June 17, 2004



View to the northeast of the flowing stream at the approximate mid-point of the planned excavation area. Crude 'staining' is also visible along the bank immediately above the water line (far right and bottom left of photo).

Photo taken: June 17, 2004



View to the north of the flowing stream at the north end of the planned excavation area. Note the padding in place as countermeasure to the crude release. Crude 'staining' is also visible along the bank immediately above the water line.

Photo taken: June 17, 2004



View to the east of the flowing stream at the north end of the planned excavation area. Note the padding in place (far left of photo) as countermeasure to the crude release. Crude 'staining' is also visible along the bank immediately above the water line.

Photo taken: June 17, 2004





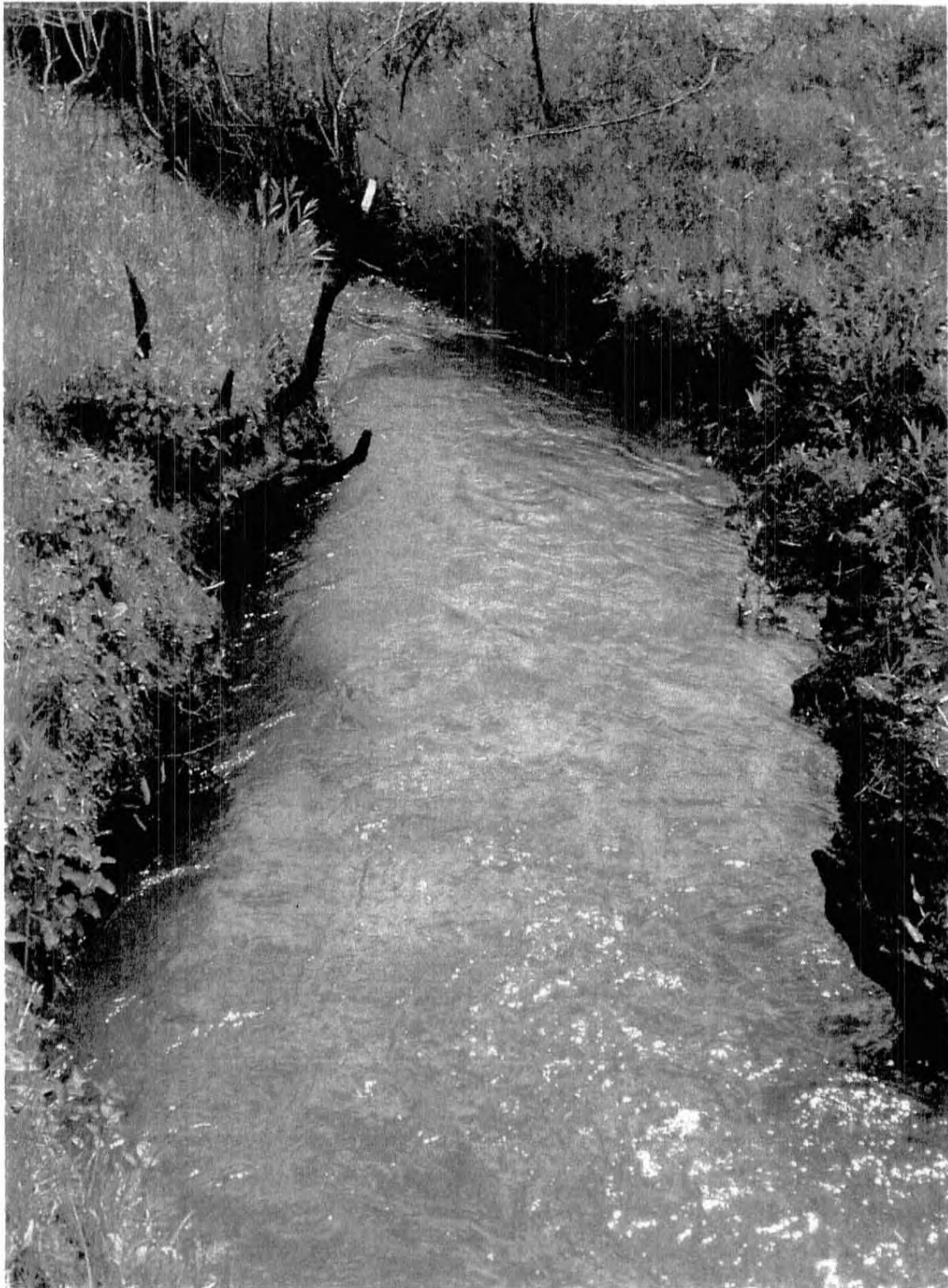
View to the north of the flowing stream at the north end of the planned excavation area. Note the padding in place as countermeasure to the crude release. Crude 'staining' is also visible along the bank immediately above the water line.

Photo taken: June 17, 2004



View of the flowing stream to the west of the planned excavation area. Note some residual evidence of the crude release along the banks just below the grass line.

Photo taken: June 17, 2004



View to the east of the flowing stream to the north of the planned excavation area. Note some residual evidence of the crude release on the surface along the banks just below the grass line.

Photo taken: June 17, 2004



View to the southeast of the stream bed and banks, pre-excitation. The disturbed area of the banks is where the fiberglass pipeline was excavated and capped on either end to prevent any additional release from residual crude in the lines.

Photo taken: December 10, 2004



View to the east of the stream bed and banks, pre-excavation. This photo was taken on the south end of the expected area of excavation. Note some residual evidence of the crude release on the surface along the banks just above the snow.

Photo taken: December 10, 2004



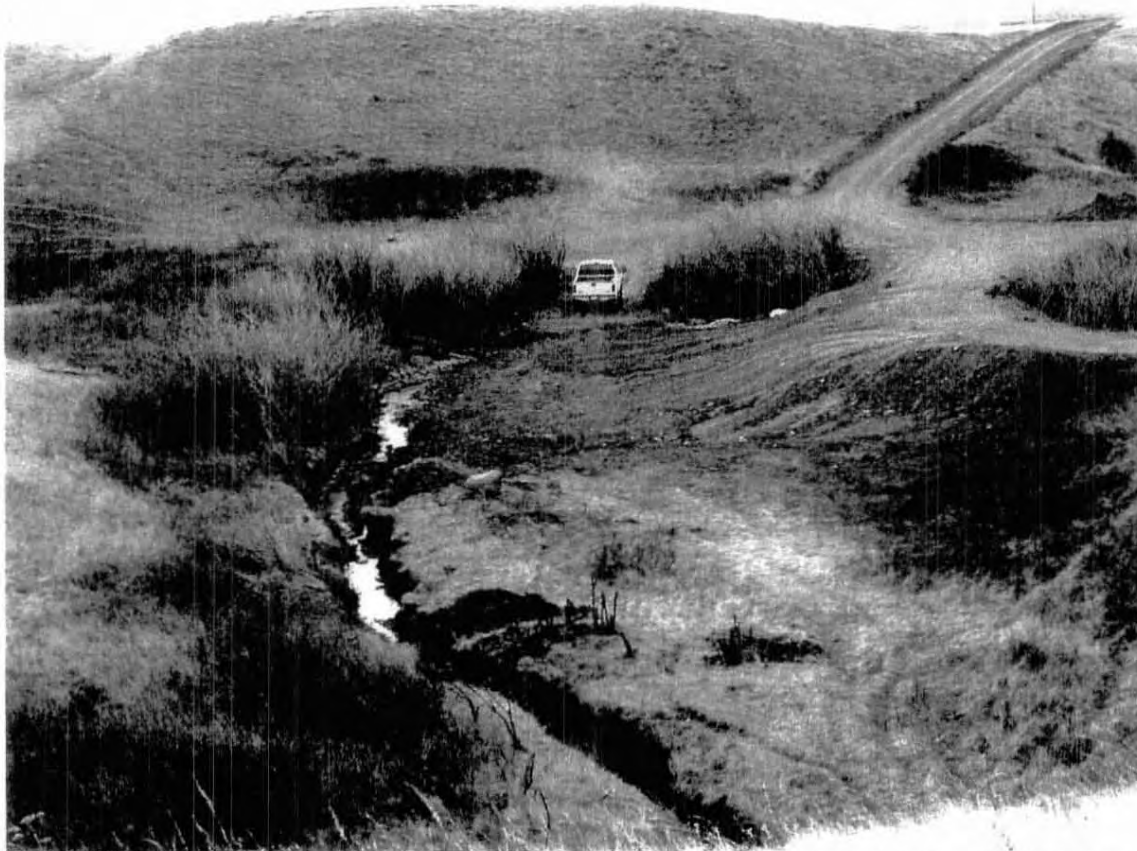
View to the east of the stream bed and banks, pre-excavation. This was taken on the extreme north end of the area that was selected to be excavated. Note some residual evidence of the crude release on the surface along the banks just above the snow.

Photo taken: December 10, 2004



View to the north showing the pre-vegetation state following bank reconstruction. Sandbags on the east bank of the stream were placed in March 2005.

Photo taken: March 15, 2005



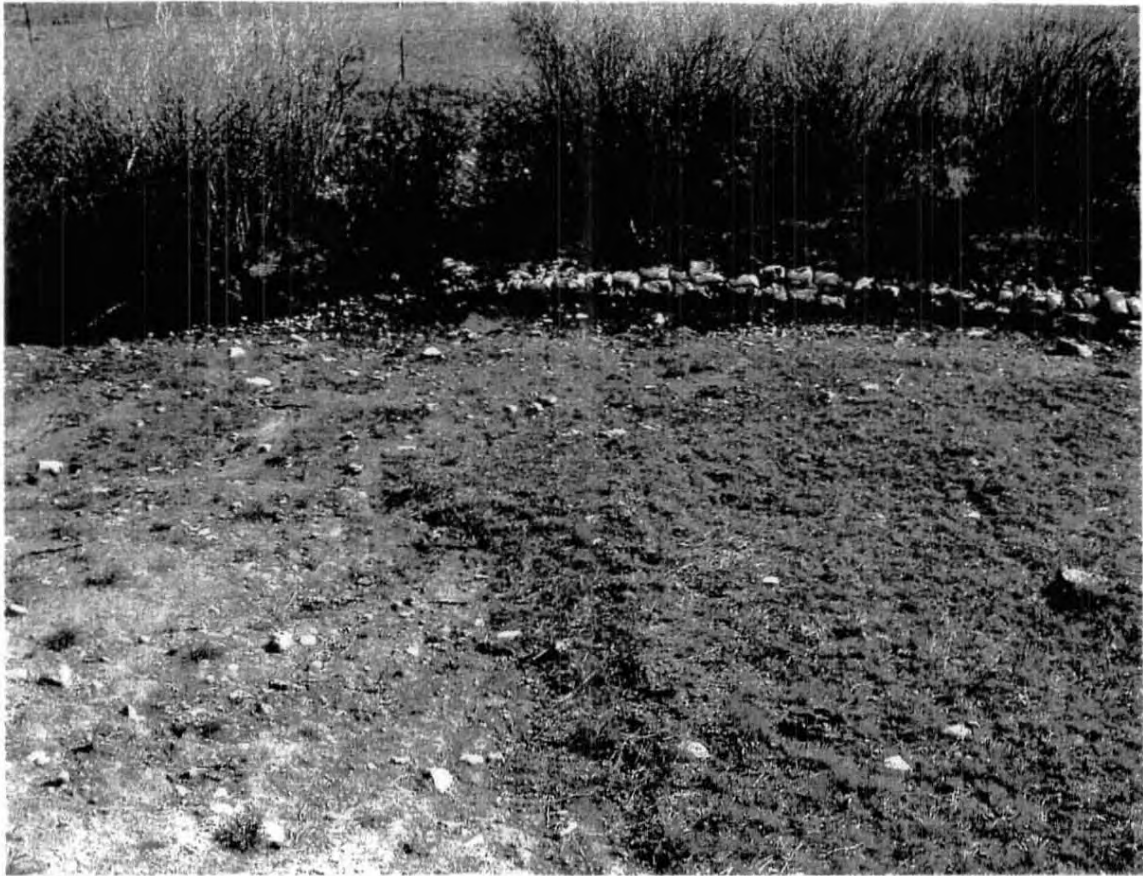
View to the south showing the pre-vegetation state following bank reconstruction. Sandbags on the east bank of the stream were placed in March 2005.  
Photo taken: March 15, 2005





View to the southeast showing remediated area just below culvert. Note that vegetation on both banks (north and south) is beginning to fill in where topsoils were replaced after the excavation and bank reconstruction. Also note the stream cuts beginning to develop.

Photo taken: May 4, 2006



View to the southeast showing remediated area. Note that vegetation on the north bank is beginning to fill in where topsoils were replaced after the excavation and bank reconstruction.  
Photo taken: May 4, 2006



View to the east showing remediation area just east of the culvert. Note that vegetation is filling in on the north bank after the excavation and bank reconstruction.

Photo taken: May 4, 2006



View of the southeast bank of the stream, showing remaining residual crude in remediated area.  
Photo taken: May 4, 2006



Montana Department of  
**ENVIRONMENTAL QUALITY**

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 •



**COPY**  
BILL

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

April 20, 2004

Mark Hesla  
Fulton Fuel Company  
127 Main Street  
Shelby, MT 59474

**Re: Notice of Violation Letter for the Fulton Crude Oil Release into Fred and George Creek, Toole County, Montana (CVID #7972)**

Dear Mr. Hesla:

The Montana Department of Environmental Quality (DEQ) Enforcement Division was notified on March 3, 2004 of the release of approximately 6 or more barrels of crude oil into Fred and George Creek located in Township 37N, Range 2E, southwest quarter of Section 14, which was discovered on February 29, 2004. The spill is located on the property of Brian Ratzburg. This site was referred to the DEQ Remediation Division, Groundwater Remediation Program on April 12, 2004.

Crude oil was released from a Fulton Fuel Company (FFC) 2-inch flow line directly above Fred and George Creek. Approximately one mile of total stream length has been impacted with either free product or sheen. The creek is spring fed, and flows year round near the source. The creek does go dry further down the drainage. Absorbent booms and pads were placed at various locations along the creek to intercept crude, filter creek water, and prevent contamination from migrating further downstream. A siphon dam was installed, which may have been of limited effectiveness due to inappropriate construction. Two vacuum trucks were brought in to flush and capture free product. Mr. Larry Alheim of DEQ collected soil and water samples, which indicated surface water contamination as high as 315 parts per million (ppm) extractable petroleum hydrocarbons (EPH) in Sample #4, and soil (sediments?) contamination as high as 15,400 ppm EPH in Sample #2. Volatile petroleum hydrocarbons (VPH) analysis of water sample #5 found C9-C10 Aromatics at 282 ppb which exceeds DEQ's Risk-Based Screening Level (RBSL) of 50 ppb for this fraction. VPH analysis of Soil Sample #2 found benzene at 1.6 ppm, which exceeds the RBSL 0.05 ppm for surface soil.

It is a violation of the Montana Water Quality Act (WQA) to cause pollution of any state waters, or to place, or cause to be placed wastes where they will cause pollution of any state waters. Section 75-5-605(1)(a), MCA. The release of crude oil at the above-described location

constitutes a violation of the WQA. Because FFC is the owner/operator of the flow line from which the release occurred, DEQ hereby issues to FFC a violation letter pursuant to Section 75-10-617(1)(a), MCA.

At this time, DEQ requires that FFC complete the following actions:

1. Collect surface water samples and collocated sediment samples. These samples should be analyzed for EPH screen and VPH. If the EPH screen produces a Total Extractable Hydrocarbon (TEH) value of 300 ppb or greater in water, or 50 ppm or greater in sediments, then EPH fractionation must be run, and the sample must also be analyzed for polynuclear aromatic hydrocarbons (PAHs) by EPA Method 8270. Sediment samples must also be analyzed for total organic carbon. All sediment sample results need to be reported on a dry-weight basis (the laboratory will need to be instructed to do this). Please be aware that samples to be submitted for VPH must not be composited in the field. Samples must represent worst-case conditions in the stream bed and bank at several points along the contaminated portion of the stream, and at least one set of samples must be collected from downstream of the area where work has occurred to document clean downstream conditions. Also, collect "background" sediment/soil and water samples upstream of the release, because natural sediment samples and some stream water can contain large amounts of organic matter that may be reflected in the EPH screen. These sampling results will serve as a "baseline" for comparison to later sample results.
2. Compare results of surface water sampling to WQB-7 Numeric Water Quality Standards, selecting the most conservative of the Aquatic Life Standards or the Human Health Standards.
3. Compare the results of soil sampling to appropriate RBSLs.
4. Compare the results of sediment sampling to Washington State Department of Ecology Freshwater Sediment Quality Values. A qualified environmental professional may also perform a risk assessment to generate site-specific cleanup levels, which would need to be reviewed and approved by DEQ.
5. Determine the vertical and lateral extent of contaminated soil and sediment. Generate a map of the impacted length of the creek, and document areas of contamination on this map. Sample results can be documented on this map as well. A photographic log of creek conditions must be maintained.
6. It may be possible to remove areas of stained soil and sediment by careful digging with hand-tools, especially if the creek goes dry during some portion/s of the year. If remedial excavation is employed for cleaning up soil contamination, confirmation samples must be collected from the excavated areas. At least one composite confirmation sample must be collected for every 25' x 25' of surface area in the excavation. Professional judgment may dictate the collection of additional samples. These samples must be analyzed for EPH screen and VPH. If the EPH screen produces a TEH value of 50 ppm or greater, then EPH fractionation must be run, and the sample must also be analyzed for PAHs by EPA Method 8270. At other sites where petroleum products have impacted surface water and streambeds and banks,

DEQ has required the generation of a Site-Specific Risk Assessment that addresses threats to both human and ecological receptors. However, if FFC can clean up the crude in the creek to "non-detect" or background levels, the drafting of a Site-Specific Risk Assessment may not be necessary.

7. FFC may propose alternative remediation strategies, which must be reviewed and approved by DEQ.
8. Properly manage all excavated contaminated soil. If the volume of the petroleum-contaminated soil exceeds 1600 cubic yards, then the soil must be transported to, and managed at, an existing licensed landfarm or a licensed Class II landfill. If the volume of contaminated soil does not exceed 1600 cubic yards, then it may be managed at a one-time landfarm registered with DEQ's Waste Management Section or a licensed Class II landfill. Please let me know if you would like a copy of DEQ's *"Guidelines for Registered Landfarming of Hydrocarbon Contaminated Soils."* If you have any questions please contact George Scriba of DEQ's Permitting and Compliance Division, Waste Management Section at (406) 444-1434. If contaminated soil needs to be stockpiled, it should be placed on plastic sheeting and bermed to prevent runoff.
9. DEQ is not requiring the installation of groundwater monitoring wells at this time. However, if it is determined that crude has migrated into subsurface soil, DEQ may require the installation of an appropriate number of monitoring wells to determine whether or not groundwater has been impacted. There may be perched or shallow groundwater in the area of the creek. Monitoring wells must be surveyed for location and elevation by a licensed surveyor, and tied to an established USGS datum.
10. Conduct a survey of potential receptors within one-half mile downgradient of the site and collect water samples, if appropriate, from these receptor points.
11. If the siphon dam is not functioning properly, it must be reconstructed or fixed. Booms and absorbent pads must be placed to capture contamination until DEQ determines that these can be removed. Booms, pads, and dams must be monitored at least weekly to ensure that they are functioning appropriately. Replace booms and pads as necessary. Surface water samples must be collected at least once a month to document whether or not contamination is moving downstream.
12. FFC must work with the property owner regarding issues such as fencing of the contaminated area to keep out cattle, ensuring that the property owner's cattle have access to adequate water supplies, and other issues that may arise.
13. FFC must ensure that all necessary permits are secured prior to conducting work in the streambed or on the stream banks. FFC should contact the local Conservation District for a 310 permit prior to conducting excavation activities in the creek. FCC should contact the DEQ's Permitting and Compliance Division, Water Protection Bureau to obtain a 318 permit if a short-term activity may cause unavoidable short-term violations of state water quality standards. If Fred and George Creek flows into navigable waters, FCC may need to obtain a 404 permit of the Army Corp of Engineers.

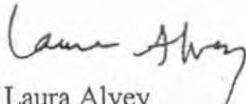
14. FFC must submit information detailing the following information about Fred and George Creek: human uses of the creek, habitat types adjacent to the creek, animal uses of the creek, endangered and/or threatened species that may use the creek as habitat, flow characteristics of the creek (average flow volumes during different times of the year), eventual discharge point of the creek, and any other pertinent information.
15. Submit a report to DEQ that contains a description of the release and the initial remedial response actions conducted at the site, all analytical results, a map of the site, and photographs taken of the site, and a discussion of data quality. If soil samples have been collected, the locations of these should be indicated on a map. If an excavation has occurred, the boundaries of the excavation should be indicated on a map and the confirmation sample locations should be indicated as well. Any nearby receptors should also be indicated on the site map. Finally, the report should include any recommendations for future remedial actions.

FFC must send written notification to DEQ within two weeks of receipt of this certified letter stating its commitment to conduct the actions outlined in items 1 through 15 (above). A work plan and tentative schedule of implementation that addresses items 1 through 15 (above) must accompany the letter of commitment. The work plan should include all relevant standard operating procedures (SOPs), or reference these if DEQ has a copy of the SOPs on file.

If FFC fails to comply with the requirements of this violation letter, DEQ is required by Section 75-5-617(2), MCA, to issue an administrative order or commence a civil action requiring compliance, which may include the assessment of penalties of up to \$25,000.00 per day of violation. In addition, a civil action may result in the assessment of DEQ's costs.

Please contact me at (406) 841-5062 or [lalvey@state.mt.us](mailto:lalvey@state.mt.us) if you have any questions concerning the requirements of this letter.

Sincerely,



Laura Alvey  
Groundwater Remediation Program  
Remediation Division

cc: Jane Amdahl, DEQ Legal Unit  
Chad Anderson, DEQ Enforcement Division  
Toole County Sanitarian, 226 1<sup>st</sup> Street South, Shelby, MT 59474  
Sarah Shepherd, Toole County Conservation District, 1125 Oilfield Avenue, Shelby, MT 59474  
Brian Ratzburg, HC 51 Box 269, Galata, MT 59474



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

Docket No.: CWA-08-2009-0020

IN THE MATTER OF

MCR, LLC  
Shelby, Montana

Respondent.

COMPLAINT AND  
CONSENT AGREEMENT

(Proceeding to Assess Class II  
Civil Penalty Under Section 311  
of the Clean Water Act)

The United States Environmental Protection Agency, Region 8 (EPA or Complainant), and MCR, LLC (Respondent) by its undersigned representatives, hereby consent and agree as follows:

A. PRELIMINARY MATTERS

1. This Complaint and Consent Agreement (CCA) is issued to Respondent for violating section 311(j)(5) of the Clean Water Act (CWA or the Act), 33-U.S.C. § 1321(j)(5), and the implementing regulations at 40 C.F.R. part 112.
2. The undersigned EPA, Region 8 officials have been properly delegated the authority to issue this CCA under the authority vested in the Administrator of EPA by section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. §1321(b)(6)(B)(ii) to bring an action for civil administrative penalties against a respondent who has violated, or is in violation of, a requirement or prohibition of the CWA or its implementing regulations.
3. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action

IN THE MATTER OF MCR, LLC  
Combined Complaint and Consent Agreement

10. This CCA contains all terms of the settlement agreed to by the parties.

**B. ALLEGED VIOLATIONS**

1. Respondent is incorporated in the state of Montana.

2. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil ... from vessels and from onshore and offshore facilities, and to contain such discharges...."

3. EPA promulgated the oil pollution prevention regulations set forth at 40 C.F.R. part 112.

4. 40 C.F.R. § 112.1(b) states that the requirements of part 112 apply

"to owners or operators of non-transportation related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines ...."

5. Respondent purchased several oil production facilities (the facilities) located in Toole, Liberty, Pondera and Teton counties, Montana, during the period September 1, 2004, through November 2007. These facilities are listed in Respondent's Containment Schedule (Attachment 1).

6. Respondent is 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 the facilities.

7. At all times pertinent to this Complaint, the facilities included crude oil tank batteries, producing oil wells, and flow lines each with an aggregate above-ground storage capacity greater than 1,320 gallons of oil in containers each with a shell capacity of at least 55 gallons.

IN THE MATTER OF MCR, LLC  
Combined Complaint and Consent Agreement

part that “any owner, operator, or person in charge of any vessel, onshore facility or offshore facility (ii) who fails or refuses to comply with any regulation issued under subsection (j) of this section to which that owner, operator, or person in charge is subject, may be assessed a class I or class II civil penalty by ... the Administrator.”

15. The facilities did not have written SPCC plans nor did they have adequate SPCC implementation and containment measures to prevent unauthorized discharges of oil to waters of the United States.

16. Respondent failed to prepare and implement written SPCC plans in accordance with the regulations at 40 C.F.R. §§ 112.7, 112.9 and 112.10 as required by 40 C.F.R. § 112.3.

17. Respondent’s failure to prepare and implement written SPCC plans in accordance with the regulations at 40 C.F.R. §§ 112.7, 112.9 and 112.10 from September 1, 2004, through the date of this CCA for its facilities, constitutes violations of 40 C.F.R. § 112.3 and sections 311(b)(6)(A), 33 U.S.C. § 1321(b)(6)(A), and 311(j)(1)(C), 33 U.S.C. § 1321(j)(1)(C), of the Act.

18. As alleged in the preceding Paragraphs, and pursuant to section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii) and 40 C.F.R. § 19.4, the Respondent is liable for civil penalties.

**C. COMPLIANCE SCHEDULE**

1. Respondent agrees to prepare and implement written SPCC plans for all facilities listed in Attachment 1 to bring them into compliance with applicable requirements of 40 C.F.R. part 112 and section 311 of the Act, 33 U.S.C. § 1321, by no later than August 31, 2010.

2. Respondent agrees to prepare and submit an interim report to EPA documenting the compliance measures completed by July 31, 2009. A second interim report will be submitted to

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IN THE MATTER OF MCR, LLC  
Combined Complaint and Consent Agreement

incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

4. Respondent consents to the issuance of a Final Order and consents for the purposes of settlement to the payment of the civil penalty of fifty thousand dollars (\$50,000) in the manner described below:

a. **Payment is due within thirty (30) calendar days from the date written on the Final Consent Order**, issued by the Regional Judicial Officer, that adopts this CCA. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by the Bank described below. Payments received by 11:00 AM. EDT are processed on the same day, those received after 11:00 AM are processed on the next business day.

b. The payment in paragraph D.2, supra, shall be made by remitting a cashier's or certified check, including the name and docket number of this case, referencing "Oil Spill Liability Trust Fund-311," for the amount, **payable to the "Environmental Protection Agency,"** to:

**CHECK PAYMENTS:**

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

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IN THE MATTER OF MCR, LLC  
Combined Complaint and Consent Agreement

**ON LINE PAYMENT:**

WWW.PAY.GOV

Enter sfo 1.1 in the search field. Open form and complete required fields.

A copy of the check, or wire transfer, shall be sent simultaneously to:

Jane Nakad (8ENF-UFO)  
U.S. EPA Region 8  
Technical Enforcement Program  
1595 Wynkoop St.  
Denver, CO 80202-1129

and

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

c. Payment of the penalty in this manner does not relieve Respondent of its obligations to comply with the requirements of the Act and the implementing regulations. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

**E. TERMS AND CONDITIONS**

1. Failure by Respondent to comply with any of the terms of this CCA shall constitute a breach of the CCA and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.
2. Nothing in this CCA 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

IN THE MATTER OF MCR, LLC  
Combined Complaint and Consent Agreement

6. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this CCA.

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8, Office of Enforcement, Compliance  
and Environmental Justice, Complainant.

Date: 6/30/09

Eddie A. Sierra  
Eddie A. Sierra, Acting Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

Date: June 26, 2009

Marc Weiner  
Marc Weiner, Enforcement Attorney  
U.S. EPA, Region 8  
999 18<sup>th</sup> Street, Suite 300 (8ENF-L)  
Denver, CO 80202-2466  
Tel. (303) 312-6913

MCR, LLC  
Respondent.

Date: JUNE 17, 2009

By: Gary McDermott  
Gary McDermott, Authorized Agent for Respondent

In the Matter of: MCR, LLC  
Docket No. CWA-08-2009-0020

Attachment 1  
SPCC Containment Schedule

**MC .LC**  
**SPCC Containment Schedule**

					2009						2010						
3/16/2009	County	Previous	Containment	Scheduled	May	June	July	Aug	Sep	Oct	April	May	June	July	Aug	Sep	Oct
Field	State = MT	Owner	Requirements	Timeframe													
<b>Plan 1</b>																	
<b>MINERS COULEE OIL FIELD</b>																	
Miners Coulee Compressor Site	Toole	Fulton Producing	Add Containment	May-09													
J Fey #1-9	Toole	New Facility	Containment Complete	N/A													
McCUTCHEON #8x-9	Toole	New Facility															
McCUTCHEON #3-9	Toole	New Facility	Containment Complete	N/A													
McCUTCHEON #11-9x	Toole	New Facility															
<b>FRED &amp; GEORGE CREEK FIELD</b>																	
J Fey #8-2	Toole	Will be a new facility	Portable Tank on Location until Frac is completed to determine if economical						Pending								
Fey-Vessels #2-3	Toole	Fulton Producing	Tanks will be decommissioned														
Sunburst A Sand Unit	Toole	Fulton Producing	Present Containment needs to redressed - add for waste oil tank	May-09													
Sunburst "B" Sand Unit (Main)	Toole	Fulton Producing	Add Containment	Jun-09													
SE Sunburst "B" Sand Unit	Toole	Fulton Producing	Containment Complete	N/A													
SW Sunburst "B" Sand Unit	Toole	Fulton Producing	Add Containment	Jun-09													
SASU Injection Station	Toole	Fulton Producing	Oil Spill Contingency Plan	Jun-09													
Fey A 15-28	Toole	Fulton Producing	Tanks will be decommissioned	Sep-09													
Fey K 3-4	Toole	Fulton Producing	Tanks will be decommissioned	Sep-09													
Fey E 2-33	Toole	Fulton Producing	Tanks will be decommissioned	Sep-09													
<b>NORTH FRED &amp; GEORGE FIELD</b>																	
North Sunburst B Sand Unit	Toole	Fulton Producing	Add Containment	Jul-09													
US 14x-11 (Federal)	Toole	Fulton Producing	Potential to lay new flowlines and decommission tank battery														
A Fey 31x-12	Toole	Fulton Producing	Tanks will be decommissioned														
Prichard Creek Unit	Toole	Fulton Producing	Add Containment	Jul-09													
<b>ARCH APEX FIELD</b>																	













1 Douglas C. Allen  
Attorney at Law  
2 153 Main Street  
P.O. Box 873  
3 Shelby, MT 59474  
Telephone: (406) 424-8020  
4 Facsimile: (406) 434-5522

5  
6 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

7 IN THE MATTER OF:

8 FULTON FUEL COMPANY  
127 Main Street  
9 Shelby, MT 59474

\*  
\* Docket No. CWA-08-2009-0006  
\*  
\* RESPONDENT'S MOTION TO SET ASIDE  
\* DEFAULT AND TO SET HEARING ON  
\* THE MERITS

10  
11 **INTRODUCTION**

12 The Environmental Protection Agency (EPA) has made a Motion  
13 for Default Judgment and Order against Respondent Fulton Fuel  
14 Company assessing a fine of \$32,500.00.

15 In response Fulton Fuel Company filed its Response to Order  
16 to Supplement the Record and to Show Cause on January 4, 2010  
17 together with evidence in exhibits attached.

18  
19 Respondent hereby files its Motion to Set Aside any Default  
20 that may have been heretofore executed and requests this matter  
21 be set for hearing on the merits. In support Respondent is filing  
22 herewith an Answer of Fulton Fuel Company and Request for Hear-  
23 ing, and an Affidavit of the President of Fulton Fuel Company,  
24 William M. Fulton Jr.

25  
26 **MEMORANDUM IN SUPPORT OF THE MOTION**

27 An Order of Default may not yet have been entered in this  
28 case. If not Respondent requests that its Answer be filed. If  
Default is deemed already to be entered, Respondent requests that

1 its Answer be lodged pending an Order of the Court on the pending  
2 motion.

3  
4 1. Defaults are not favored.

5 It is the policy of the law that whenever possible disputes  
6 should be decided on the merits, with each party participating  
7 and having an opportunity to be heard.

8 2. Respondent has meritorious defenses.

9 In considering whether to enter a default the Court should  
10 consider whether the Respondent may have a meritorious defense.  
11 Here the Answer filed or lodged by Fulton Fuel Company, the  
12 Affidavit of William M. Fulton, Jr., and the Response of Fulton  
13 Fuel Company, and exhibits attached, filed January 4, 2010  
14 demonstrate Respondent has defenses including lack of jurisdic-  
15 tion, factual issues, acts or omissions of third party and  
16 unavoidable accident.

17 a. Jurisdiction.

18 The EPA is alleging violations of Section 33 USC §1321  
19 (b) and subsections which prohibit the discharge of oil  
20 into or upon navigable waters of the United States.  
21 Section (b) (1) indicates the scope and policy of the  
22 act.

23 [1] The Congress hereby declares that it is the policy  
24 of the United States that there should be no discharges  
25 of oil ....into or upon the navigable waters of the  
26 United States....

27 The EPA also asserts liability on the alleged duty of  
28 Respondent Fulton Fuel Company to create a "written SPCC plan"  
(spill plan) for its storage facility. Any adequate investigation  
by the EPA would have disclosed, and the Answer of Fulton Fuel

1 Company which buried the flowline in rock several feet below  
2 ground, and that the spill was as to Fulton Fuel Company, an  
3 unavoidable accident are defenses recognized by the Act. See 33  
4 USC §1321 (f).

5  
6 3. Any default against Respondent should be set aside on  
grounds of excusable neglect.

7 a. Fulton Fuel Company hired counsel, other than its present  
8 counsel and reasonably believed such hired counsel was  
meeting EPA claims and complaints.

9 The record now before the Regional Judicial Officer in this  
10 case demonstrates:

11  
12 1) Fulton Fuel Company promptly discovered a small 6 to 10  
13 barrel oil spill and immediately commenced, sustained and  
paid for remediation, testing and restoration of all envi-  
ronmental effects of that spill;

14 2) That Attorney Renee Coppock of the Crowley Fleck law firm  
15 of Billings, Montana, was retained by Fulton Fuel Company to  
handle all legal matters pertaining to environmental issues  
with local, state and federal governments;

16  
17 3) That attorney Coppock arranged for and monitored the  
remedial, testing and reporting activities of Hydro Solu-  
18 tions Inc., corresponded with state and federal agencies,  
including the EPA and filed the Response to the United  
19 States Environmental Protection Agency, which underlies this  
case, with the EPA; and

20 4) Fulton Fuel Company was unaware that attorney Coppock had  
21 not entered an appearance in this matter until December 21,  
2009. See Affidavit of William M. Fulton, Jr.

## 22 CONCLUSION

23 It is respectfully submitted that the Regional Judicial  
24 Officer should not enter a Default Order, or should set aside any  
25 Default Order heretofore granted; and further that Respondent be  
26 granted a hearing on the merits with an opportunity to refute the  
27 erroneous jurisdictional and factual allegations of the EPA.

28 Respectfully submitted this 4th day of March, 2010.



1  
2  
3 Douglas Allen by TF  
4 Douglas C. Allen  
5 Attorney for Fulton Fuel Co.  
6  
7

8 **CERTIFICATE OF SERVICE**

9 I hereby certify that on the 4th day of March, 2010, I  
10 mailed a true and correct copy of the foregoing document, postage  
11 prepaid, to the following:

11 Marc D. Weiner  
12 Enforcement Attorney  
13 1595 Wynkoop Street  
14 Denver, CO 80202-1129

14 Tina Artemis  
15 Regional Hearing Clerk  
16 US Environmental Protection Agency, Region 8  
17 1595 Wynkoop Street  
18 Denver, CO 80202-1129  
19 Fax: (303)-312-6859  
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23  
24  
25  
26  
27  
28

T. Frydenlund