



MERIT ENERGY COMPANY

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October 25, 2007

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EPA REGION 8  
HEARING UNIT

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

Re: In the Matter of Merit Energy Company  
Powell Pressure Maintenance Unit Central  
Battery Facility, Docket No. CWA-08-2007-0027  
Administrative Complaint and Notice of Opportunity for  
Hearing

Dear Ms. Artemis:

In accordance with 40 CFR 22.15 Answer to the Complaint and 40 CFR 22.38 of the Consolidated Rules, Merit Energy Company (Merit) hereby submits its answers (enclosed) to the allegations contained in referenced complaint. Merit, by this letter, reserves its right to formally contest any allegations set forth in the complaint. Merit also challenges the basis of the proposed relief. Merit believes that the complaint has overstated the severity of the non-compliance and the environmental impact.

Merit Energy Company hereby requests an informal conference and hearing with the EPA as outlined in the complaint.

If you have any questions regarding the answers to the allegations and the proposed penalty, please do not hesitate to call me at (972) 628-1558.

Sincerely,

MERIT ENERGY COMPANY

Arlene Valliquette  
Land & Regulatory Manager – North Division

Enclosure

Cc: Amy Swansen (8ENF-L)  
Donna Inman (8ENF-U)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

JBR Environmental  
Dennis Longwell – Merit, Gillette  
Jason Wacker – Merit, Dallas

**Response to Probable Violation  
Proposed Civil Penalty  
And  
Proposed Compliance Schedule  
October 25, 2007**

2007 OCT 23 PM 1:07  
EPA FILE  
NR 107000001

**Introduction:** This document is being prepared in response to the U.S. EPA's Administrative Complaint and Opportunity to Request Hearing and proceeding to Assess Class II Civil penalty Under Section 311 of the Clean Water Act for Merit Energy Company's Powell Pressure Maintenance Unit Central Battery dated September 27, 2007 (Docket No. CWA-08-2007-0027).

**2. Allegation:**

Respondent Merit Energy Company Inc. (Respondent) is a corporation organized under the laws of the State of Delaware and authorized to do business in Wyoming.

**Response:**

*The respondent admits.*

**3. Allegation:**

Respondent is a "person" within the meaning of sections 311(1)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

**Response:**

*The respondent admits.*

**4. Allegation:**

Respondent owns and operates an oil and gas production facility known as the Powell Pressure Maintenance Unit Central Battery facility (facility) within the meaning of sections 311(a)(6) and (10) of the Act, 33 U.S.C. §§ 1321(a)(6) and (10), located in the SWNE Sec. 26, T40N, R74W, Converse County, Wright, Wyoming.

**Response:**

*The respondent admits.*

5. **Allegation:**

The facility includes, but is not limited to, two 5,000 barrel (210,000 gallon) tanks containing crude oil; one 5,000 barrel (210,000 gallon) tank containing produced water; one 1,000 gallon tank containing gasoline; one 500 gallon tank containing diesel; one 300 barrel (12,600 gallon) tank containing oil; two 100 gallon waste oil tanks; one 100 barrel (4,200 gallon) heater treater; one 125 barrel (5,250 gallon) heater treater; four 440 barrel (18,480 gallon) slug catchers and an additional abandoned 100 barrel (4,200 gallon) heater treater. The total oil storage capacity at the facility is approximately 673,430 gallons. Miscellaneous production equipment including but not limited to four drip legs, two CAT compressors, and a dehydration unit also is stored at the facility.

**Response:**

*The respondent denies allegations as being non-factual. The slug catcher is also referred to as drip legs. Although the slug catcher has a large capacity it is not used to store liquid. It functions under pressure as a flow-through vessel.*

6. **Allegation:**

Crude oil, produced water, gasoline, and diesel are all oil within the meaning of "oil" as defined at section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

**Response:**

*The respondent admits.*

7. **Allegation:**

Respondent stores, transfers, distributes, uses or consumes oil or oil products at the facility.

**Response:**

*The respondent does not distribute oil products.*

8. **Allegation:**

Respondent is an "owner and operator" of an "onshore facility" within the meaning of sections 311(a)(6) and (10) of the Act, 33 U.S.C. §§ 1321(a)(6) and (10).

**Response:**

*The respondent admits.*

9. **Allegation:**

The facility is a “non-transportation related” “onshore facility” within the meaning of 40 CFR § 112.2.

**Response:**

*The respondent admits.*

10. **Allegation:**

A discharge from the facility would migrate south approximately 100 yards to a ravine, continue approximately 1.3 miles to Sand Creek, and continue further for 1 mile before reaching the confluence with the Cheyenne River.

**Response:**

*The respondent denies this allegation. The large earth dam in the ravine prevents any migration of liquids to Sand Creek.*

11. **Allegation:**

Sand Creek and the Cheyenne River are “navigable waters” and “waters of the United States” within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 CFR § 110.1.

**Response:**

*The respondent admits.*

12. **Allegation:**

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...”

**Response:**

*The respondent admits.*

**13. Allegation:**

EPA promulgated the oil pollution prevention regulations, set forth at 40 CFR part 112.40 CFR § 40 CFR § 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 its location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines....”

**Response:**

*The respondent admits.*

**14. Allegation:**

The facility is a non-transportation onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States (as defined by section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 CFR § 110.1) or its adjoining shoreline in quantities that may be harmful by either (1) violating applicable water quality standards or (2) causing a film or sheen or a discoloration of the surface water or adjoining shorelines or causing a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

**Response:**

*The respondent admits.*

**15. Allegation:**

The facility is subject to the oil pollution prevention requirements of 40 CFR part 112, pursuant to section 311(j) of the Act, 33 USC § 1321(j), and its implementing regulations.

**Response:**

*The respondent admits.*

**16. Allegation:**

40 CFR § 112.3 requires that owners or operators of onshore facilities prepare a Spill Prevention, Control, and Countermeasures (SPCC) plan in writing in accordance with applicable sections of part 112, including but not limited to, sections 112.7 and 112.8.

**Response:**

*The respondent admits that a written Spill Prevention Control, and Countermeasures (SPCC) Plan is required for this facility. In fact, the facility had an SPCC Plan in place at the time of the discharge. The Plan was prepared in accordance with applicable sections of 112.7, 112.8, and 112.9. The Plan was implemented and functioned as designed in responding, reporting, control, and cleanup of the discharge.*

**17. Allegation:**

Section 311(b)(6)(A) of the Act, 33 USC § 1321(b)(6)(A), states in pertinent part that any owner, operator, or person in charge of any vessel, onshore facility or offshore facility 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 civil penalty by ...the Administrator.

**Response:**

*The respondent admits.*

**18. Allegation:**

On or about October 9, 2006, approximately 145 barrels (6,090 gallons) of crude oil discharged from the facility into the ravine, and threatened Sand Creek.

**Response:**

*The respondent denies this allegation. The release never at any time threatened Sand Creek. Secondary containment in the ravine prohibited any migration to Sand Creek.*

19. **Allegation:**

On May 10, 2007, EPA issued the respondent a request for information pursuant to section 308 of the Act, 33 USC § 1318, to investigate the crude oil release and the status of the facility's compliance with the oil pollution prevention regulations set forth at 40 CFR part 112.

**Response:**

*The respondent admits.*

20. **Allegation:**

On or about June 6, 2007, the Respondent submitted a response to EPA's information request accompanied by a Spill Prevention, Control and Countermeasure (SPCC) Plan for the facility dated August 9, 2004.

**Response:**

*The respondent admits.*

21. **Allegation:**

The following SPCC measures were found to be deficient at the facility at the time of the October 6, 2006 discharge:

- a. No secondary containment for the slug catcher in accordance with 40 CFR § 112.7(c) and 12.9(c)(2)

**Response:**

*The respondent denies this allegation. Secondary containment was provided in the ravine.*

22. **Allegation:**

The August 9, 2004 SPCC plan was reviewed and found to be inadequate as follows:

**Allegation:**

- a. Inadequate facility diagram in accordance with 40 CFR § 112.7(a)(3);

**Response:**

- a. *The respondent admits. However, the SPCC Plan preparer believed that the slug catcher (aka drip legs) being under pressure and the liquid having a high API gravity would not pose a risk and, therefore, did not show the equipment on the diagram. Also, the U.S. EPA is currently proposing FR Vol. 72, No. 198, October 15, 2007, to exempt flow-through vessels from secondary containment criteria. The slug catcher (aka drip legs) is in fact a flow-through vessel where gas and liquids are separated.*

**Allegation:**

- b. Inadequate discharge predictions in accordance with 40 CFR § 112.7(b);

**Response:**

- b. *The respondent admits. However, since the slug catcher (aka drip legs) does not store liquids, but separates the liquids from the gas for further processing in a flow-through manner, predicted volume was not attempted.*

**Allegation:**

- c. No procedure to confine drainage from undiked areas in a catchment basin or holding pond in accordance with 40 CFR § 112.9(c)(2);

**Response:**

- c. *The respondent denies this allegation. The entire facility's undiked area (surface drainage) drains to the catchment basin constructed in the ravine.*

**Allegation:**

- d. No procedures for visually inspecting foundations and supports for signs of deterioration and maintenance needs in accordance with 40 CFR § 112.9(c)(3); and

**Response:**

- d. *The respondent denies this allegation. There is an inspection section in the SPCC Plan which specifically lists Section 112.7(e)(g) and (h) and 112.9(b),(c)(3), (d)(1), and (d)(2) as the basis for the inspection procedures. The objective of the routine inspections including foundations and supports, as referenced in 112.9(c)(3), is to observe the general condition of the facility as well as for compliance.*

**Allegation:**



- e. No procedures to inspect saltwater disposal facilities in accordance with 40 CFR § 112.9(d)(2).

**Response:**

- e. *The respondent denies this allegation. There are no salt water disposal procedures because this facility does not produce salt water. All separated produced water is placed in a diked storage tank. The produced water is then trucked to a licensed water disposal facility.*

**23. Allegation:**

The respondent failed to prepare and implement an SPCC plan for the facility in accordance with the regulations at 40 CFR § 112.7 and 112.8 as required by 40 CFR § 112.3.

**Response:**

*The respondent denies this allegation. An SPCC Plan was prepared according to the appropriate regulation. The Plan was implemented or otherwise used when the discharge occurred. The response, containment, cleanup, and reporting was all conducted according to the Plan.*

**24. Allegation:**

Respondent's failure to prepare and implement an SPCC plan in accordance with the regulations at 40 CFR §§ 112.7 and 112.8 from October 9, 2006, through and including September 30, 2007, a duration of approximately twelve (12) months, constitutes violations of 40 CFR § 112.3 and sections 311(b)(6)(A), 33 USC § 1321(b)(6)(A), and 311(j)(1)(C), 33 USC § 1321(j)(1)(C) of the Act.

**Response:**

*The respondent denies this allegation. The SPCC Plan that was in effect at the time of discharge functioned as designed. On-site mitigation measures included:*

- a. *Locking of the valve that was left open and*
- b. *An earthen berm constructed at the lower end of the slug catching equipment.*

## PROPOSED PENALTY

The respondent believes that the alleged violations are overstated or not factual. The respondent believes that the waters of the U.S. were never threatened.

The discharge was contained and cleaned up. Environmental damage was negligible.

The respondent believes that mitigation measures have not been considered in evaluating the allegations i.e., a lock has been placed on the valve that was inadvertently left open; also an earthen berm with a locked drain valve at the lower end of the slug catcher was constructed soon after the discharge event.

The SPCC Plan has been amended to include:

1. Slug catcher on the diagram
2. Revised release prediction based on a specified amount of time
3. Revised inspection procedure for clarification
4. New containment berm down slope of the Slug catcher building
5. Reference the large earthen dam in the ravine as a containment structure.

The respondent believes any non-compliance issues to be minimal and that environmental impact was not moderate but negligible.