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EPA REGION VIII
HEARING CLERK

8 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
9 REGION 8

10 IN THE MATTER OF:

*

* Docket No. CWA-08-2009-0006

11 FULTON FUEL COMPANY

*

12 127 Main Street

* ANSWER OF FULTON FUEL COMPANY AND

13 Shelby, MT 59474

* REQUEST FOR HEARING

14 For its Answer to the Administrative Complaint and Opportu-
15 nity to Request Hearing on file herein, Fulton Fuel Company
16 responds as follows:

17 **FIRST DEFENSE**

18 The Environmental Protection Agency does not have jurisdic-
19 tion over the Respondent or the subject matter of this proceed-
20 ing.

21 **SECOND DEFENSE**

22 Further answering the Administrative Complaint, Respondent
23 states as follows:

24 1. Respondent admits the allegations of paragraphs 1
25 and 2.

26 2. Respondent admits the allegations of paragraphs 3
27 and 4 insofar as they contain general statements of
28 law; however Respondent alleges the law stated is not
applicable to the facts of this case.

3. Respondent admits the allegations of paragraph 5, 7
and 8; and denies paragraph 6.

4. Respondent denies paragraphs 9, 10, 11, 12, 13 and
14; except Respondent admits in response to paragraph
11 that a small oil spill from 6 to 10 barrels occurred
on February 29, 2004 from an invisible flowline
constructed several feet underground in rock by a third
party, namely Western Natural Gas Company of Shelby,

1 Montana, and that spill was not from Respondent's
2 "facility" as alleged therein.

3 5. Respondent neither admits or denies the conclusions
4 set forth in paragraph 15 and alleges that said
5 photographs are the best evidence of their content and
6 speak for themselves.

7 6. Respondent denies paragraph 17.

8 7. Respondent admits paragraphs 18 and 19 insofar as
9 said paragraphs state abstract principles of law, but
10 Respondent denies that said statements of law are
11 applicable to this case.

12 8. Respondent denies paragraphs 20, 21 and 22.

13 9. Respondent admits paragraph 23 insofar as it states
14 abstract statements of law, but Respondent denies said
15 statements of law are applicable to this case.

16 10. Respondent denies paragraph 24.

17 11. Respondent admits paragraph 25, and alleges that no
18 spill occurred from any "facility" subject to any
19 applicable requirement for "a written SPCC plan".

20 12. Respondent denies paragraphs 26, 27, 28 and 29.

21 13. Respondent denies the general allegations and
22 refutes the conclusions set forth in the Complaint
23 under the headings of "PROPOSED PENALTY" and "TERMS OF
24 PAYMENT FOR QUICK RESOLUTION".

25 **THIRD AND AFFIRMATIVE DEFENSE**

26 The oil spill referred to in the Administrative Complaint
27 was caused by the acts and omission of a third party namely
28 Western Natural Gas Company for which Respondent is not liable.

29 **FOURTH AND AFFIRMATIVE DEFENSE**

30 The oil spill referred to in the Administrative Complaint
31 was the result of an unavoidable accident for which Respondent is
32 not liable.

33 WHEREFORE having fully answered the Administrative
34 Complaint, Respondent requests a hearing and demands judgment
35 that the Environmental Protection Agency take nothing by way of

1 its Administrative Complaint, the said agency be held to be
2 proceeding without jurisdiction in this case, that this
3 Administrative Complaint be dismissed, and that Respondent be
4 awarded its costs incurred herein and such other and further
5 relief as is just and equitable.

6 DATED this 4th day of March, 2010.

7
8 Douglas Allen by TF
9 Douglas C. Allen
Attorney for Fulton Fuel Co.

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16 **CERTIFICATE OF SERVICE**

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

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

21
22 Tina Artemis
Regional Hearing Clerk
1595 Wynkoop Street
23 Denver, CO 80202-1129
24 303-312-6859

25 T. Frydenlund
26
27
28