

March 17, 2021

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EPA Region VIII

Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

IN THE MATTER OF:	)
	)
Merit Energy Company, LLC	)
13727 Noel Road, Suite 1200, Tower 2	)
Dallas, TX 75240	)
	)
Respondent.	)
	)

Docket No. CWA-08-2021-0012

CONSENT AGREEMENT

**I. INTRODUCTION**

1. This is an administrative penalty assessment proceeding pursuant to sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules of Practice), as codified at 40 C.F.R. part 22.
2. Merit Energy Company, LLC (Respondent) owns and/or operates the Grass Creek Field, Stateland Tank Battery (Facility) located in Hot Springs County, Wyoming.
3. EPA and Respondent, having agreed settlement of this action is in the public interest, consent to the entry of this consent agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

**II. JURISDICTION**

4. This Agreement is issued under the authority vested in the Administrator of the EPA by section 311(b)(6)(A) of the Clean Water (Act), 33 U.S.C. § 1321(b)(6)(A). The undersigned EPA official has been duly authorized to institute this action.
5. The Regional Judicial Officer is authorized to approve this Agreement with a final order. 40 C.F.R. §§ 22.4(b) and 22.18(b).
6. The final order approving this Agreement simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

**III. GOVERNING LAW**

7. The objective of the Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. 33 U.S.C. § 1251(a).

**Discharges of Oil**

8. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), in pertinent part, prohibits discharging oil into or upon the navigable waters of the United States in such quantities as may be harmful as determined under section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4).

9. The term “discharge” is defined in section 311(a)(2) of the Act, 33 U.S.C. § 1321(a)(2), to include, in pertinent part, “any spilling, leaking, pumping, pouring, emitting, emptying or dumping. . . .”
10. The term “oil” is defined in section 311(a)(1) of the Act, in pertinent part, as “oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.” 33 U.S.C. § 1321(a)(1).
11. The term “navigable waters” is defined in section 502(7) of the Act as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). In turn, “waters of the United States” has been defined to include, inter alia, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; and tributaries to such waters. 40 C.F.R. §§ 122.2 and 110.1.
12. In accordance with section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), the President, through a delegation to the EPA, has determined, by regulation, those quantities of oil the discharge of which may be harmful to the public health or welfare or the environment of the United States. Exec. Order No. 11735, 38 Fed. Reg. 21243 (Aug. 3, 1973), and Executive Order 12777, 56 Fed. Reg. 54757 (October 22, 1991). Discharges of oil in such quantities as may be harmful include discharges of oil that: “(a) Violate applicable water quality standards; or (b) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.” 40 C.F.R. § 110.3.
13. Pursuant to section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A), any owner, operator, or person in charge of any vessel, onshore facility or offshore facility from which oil is discharged in violation of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), may be assessed a class I or class II civil penalty.
14. The term “owner or operator” is defined in section 311(a)(6) of the Act in pertinent part as “in the case of an onshore facility, . . . any person owning or operating such onshore facility . . . .” 33 U.S.C. § 1321(a)(6).
15. According to section 311(a)(7) of the Act, “person” includes an individual, firm, corporation, association, and a partnership. 33 U.S.C. § 1321(a)(7).
16. The term “onshore facility” is defined in section 311(a)(10) of the Act as “any facility . . . of any kind located in, on, or under, any land within the United States other than submerged land.” 33 U.S.C. § 1321(a)(10).

### **SPCC Plan Requirements**

17. 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 onshore. . . facilities, and to contain such discharges . . . .” Sections 311(j)(5) of the Act, 33 U.S.C. § 1321(j)(5), provides that the President shall issue regulations requiring the owner or operator of “an onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or upon the navigable waters [or] adjoining shorelines” to “submit to the President a plan for responding, to the

maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil.”

18. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to the EPA his Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding paragraph for non-transportation-related onshore facilities. By Section 2(d)(1) of Executive Order 12777, the President delegated to the EPA the authority to issue such Section 311(j)(5) regulations to govern owners and operators of such onshore facilities that are non-transportation-related.
19. The EPA promulgated the implementing regulations for oil pollution prevention, 40 C.F.R. part 112, pursuant to these delegated statutory authorities, and pursuant to the EPA’s authorities under the Clean Water Act, 33 U.S.C. § 1251 et seq., part 112 established certain procedures, methods and requirements upon each owner and operator of a non-transportation-related onshore facility if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as the EPA has determined in 40 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States.
20. Part 112 applies “to any owner or operator of a non-transportation-related onshore or offshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products, which due to its location, could reasonably be expected to discharge oil in quantities that may be harmful . . . , into or upon the navigable waters of the United States or adjoining shorelines,” 40 C.F.R. § 112.1(b), unless an exception in 40 C.F.R. § 112.1(d) applies.
21. Each owner or operator of a facility subject to 40 C.F.R. part 112 must prepare a Spill Pollution, Control, and Countermeasures (SPCC) plan in accordance with 40 C.F.R. § 112.7 and any other applicable section of Part 112. 40 C.F.R. § 112.3.
22. Pursuant to section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A), any owner, operator, or person in charge of any vessel, onshore facility or offshore facility who fails or refuses to comply with the any regulation issues under section 311(j) of the Act, 33 U.S.C. § 1321(j) to which that owner, operator, or person in charge is subject, may be assessed a class I or class II civil penalty.

#### **IV. ALLEGED FACTS**

23. Respondent was at all relevant times a limited liability company organized under the laws of the State of Delaware and authorized to do business in the State of Wyoming.
24. Respondent was at all relevant times a “person” within the meaning of sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5).
25. Respondent was at all relevant times, the owner and operator of the Facility located in Hot Springs County, Wyoming 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.

26. Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products located at the Facility.
27. The Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.
28. The Facility has an aggregate above-ground storage capacity, including the capacity of any bunkered or partially buried tank (as defined in 40 C.F.R. § 122.2), greater than 1320 gallons of oil in containers that each have a shell capacity of at least 55 gallons.
29. The Facility is located approximately 500 feet east of Grass Creek.
30. Grass Creek connects to Cottonwood Creek, which connects to the Wind River, which in turn flows into the Big Horn River.
31. The Wind River and Big Horn River are navigable waters of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).
32. The Facility has a reasonable expectation to discharge oil in harmful quantities to Grass Creek.
33. The Facility is a “non-transportation-related onshore facility” within the meaning of 40 C.F.R. § 112.2 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.
34. The Facility is therefore a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity.
35. Pursuant to the Act, E.O. 12777, and 40 C.F.R. § 112.1, Respondent, as the owner and operator of the Facility, must prepare an SPCC plan in accordance with part 112.

## **V. ALLEGED VIOLATIONS OF LAW**

### **Facility Spill**

36. On or about June 13, 2018, approximately 453 barrels of produced water and 2.2 barrels crude oil were released from a gathering line at the Facility. The produced water and oil entered an SPCC containment area and mixed with rainwater. Approximately 17 barrels of the commingled rainwater and produced water flowed through a siphon out of the SPCC containment area and entered Grass Creek.
37. The EPA learned of the discharge described in paragraph 36 above after Respondent reported the discharge to the United States Coast Guard National Response Center (NRC) on or about June 13, 2018 (NRC Report No. 1215160).
38. The discharge described in paragraph 36 above impacted Grass Creek, a perennial stream, which flows to Cottonwood Creek, also a perennial stream. Cottonwood Creek flows to the Wind River, which flows to the Big Horn River, which is a traditional navigable water within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

39. The discharge referenced in paragraph 36 above meets the definition of “oil” in section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).
40. The discharge referenced in paragraph 36 above was at all relevant times a “discharge” within the meaning of section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2).
41. The discharge referenced in paragraph 36 above violated water quality standards, caused a film or sheen upon or discoloration of the surface of the water and/or its adjoining shorelines, and/or caused a sludge or emulsion to be deposited beneath the surface of the water(s) and/or upon the adjoining shorelines of Grass Creek.
42. The discharge referenced in paragraph 36 above was discharged in “quantities as may be harmful” within the meaning of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3.
43. The waters identified in paragraph 38 above are and were at all relevant times “navigable waters” within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7).
44. Respondent’s discharge referenced in paragraph 36 above constitutes a violation of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

#### **Facility SPCC Plan**

45. On or about December 26, 2018, Respondent submitted its May 2018 SPCC plans for the Facility to the EPA.
46. The EPA reviewed the SPCC plans and noted deficiencies regarding compliance with the requirements in 40 C.F.R. part 112.
47. Respondent’s failure to have an SPCC plan meeting the requirements of part 112, as referenced in paragraph 46 above, constituted violations of 40 C.F.R. § 112.3.
48. Respondent resubmitted the SPCC plan for the Facility to the EPA on or about September 10, 2020, and the EPA confirmed the SPCC plans complied with all applicable requirements specified in 40 C.F.R. part 112 as of that date.

#### **VI. TERMS OF CONSENT AGREEMENT**

49. For the purpose of this proceeding, Respondent:
  - a. admits the jurisdictional allegations in section II of this Agreement;
  - b. neither admits nor denies the allegations stated in sections IV and V of this Agreement;
  - c. consents to the assessment of a civil penalty as stated below;
  - d. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent’s compliance history in any subsequent enforcement actions;

- e. waives any right to contest any final order approving this Agreement; and
- f. waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

50. Section 311 of the Act, 33 U.S.C. § 1321 authorizes EPA to assess a civil penalty in this matter.

51. In determining the amount of the penalty to be assessed, EPA considered the seriousness of the violations; the economic benefit to Respondent resulting from the violations; the degree of culpability involved; any other penalty for the same incident; any history of prior violations; the nature, extent, and degree of success of any efforts of Respondent to minimize or mitigate the effects of the discharge; the economic impact of the penalty on Respondent, and any other matters as justice may require, in accordance with section 311(b)(8), 33 U.S.C. § 1321(b)(8).

52. Based on the Alleged Violations of Law, and after consideration of the statutory factors in paragraph 51 above, EPA has determined a civil penalty of \$115,000 is appropriate to settle this matter.

53. Penalty Payment. Respondent agrees to:

- a. pay a civil penalty in the amount of \$115,000 within 30 calendar days of the Effective Date of this Agreement;
- b. pay the civil penalty using any method provided on the following website <https://www.epa.gov/financial/makepayment>;
- c. indicate each and every payment is payable to the “Oil Spill Liability Trust Fund-311” and identify each and every payment with the docket number that appears on the final order,
- d. within 24 hours of payment, email proof of payment to Dennis Jaramillo and Matt Castelli at [jaramillo.dennis@epa.gov](mailto:jaramillo.dennis@epa.gov) and [castelli.matthew@epa.gov](mailto:castelli.matthew@epa.gov) (“proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order).

54. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, EPA may:

- a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States’ attorneys’ fees and costs for collecting proceedings; and a quarterly nonpayment penalty for each quarter during which such failure to pay persist, 33 U.S.C. § 1321(b)(6)(H);
- b. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;

- c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and
  - d. suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
55. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.
56. This Agreement applies to Respondent and its officers, directors, managers, members, partners, employees, agents, trustees, authorized representatives, successors, and assigns. Respondent must give written notice and a copy of this Agreement to any successors-in-interest prior to transfer of any interest in the Facility. Any change in ownership or control of Respondent, including but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement.
57. The undersigned representative of Respondent certifies he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.
58. Except as qualified by paragraph 54, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

## **VII. EFFECT OF CONSENT AGREEMENT**

59. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondent's liability for federal civil penalties for the violations specifically alleged above.
60. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Environmental Appeals Board/ Regional Judicial Officer, or other delegatee.
61. EPA may use any information submitted under this Agreement in an administrative, civil judicial, or criminal action.
62. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
63. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

64. If and to the extent EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA, EPA reserves any and all of its legal and equitable rights.

**VIII. PUBLIC NOTICE**

65. As required by section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45, the EPA will provide public notice and a reasonable opportunity to comment on the penalty that Respondent has agreed to pay in this matter. The EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate this Agreement is improper or inadequate.

**IX. EFFECTIVE DATE**

66. This Agreement shall become effective on the date the final order is filed by the hearing clerk.

Consent Agreement In the Matter of Merit Energy Company  
311.0019.2019\_MeritEnergy

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY REGION 8,  
Complainant.**

**JANICE PEARSON**

Digitally signed by JANICE  
PEARSON

Date: 2021.03.16 16:34:32 -06'00'

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Janice Pearson, Branch Chief  
RCRA and OPA Enforcement Branch

**MERIT ENERGY COMPANY, LLC,  
Respondent.**

Date: 3-15-2021

By:   
Chris Hagge  
Chief Legal Officer and General Counsel