UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8
Docket No. CAA-08-2009-0013

IN THE MATTER OF: **BERRY PETROLEUM** **950 17th Street, Suite 2400** **Denver, CO 80202** **Respondent.**	**EXPLANATORY BRIEF OF THE PARTIES REGARDING SUPPLEMENTAL ENVIRONMENTAL PROJECT PROPOSED IN THE CONSENT AGREEMENT**

COMES NOW Complainant, United States Environmental Protection Agency Region 8 (EPA), and Respondent, Berry Petroleum Company, who jointly file this Explanatory Brief. On September 1, 2009, the Presiding Officer conducted an informal status conference with the parties and requested clarification regarding whether the wellhead casing gas flare proposed in the Consent Agreement is eligible to be considered a Supplemental Environmental Project (SEP) or whether such a flare is an existing compliance requirement. The parties jointly submit this Explanatory Brief in support of this proposed SEP. Presently, the parties have fully-executed a Consent Agreement in this matter which resolves the allegations contained in the Complaint previously filed. The Consent Agreement is pending before the Presiding Officer for approval. The Complaint alleged certain violations concerning Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants, codified at 40 CFR part 60, subpart KKK (subpart KKK.)

This brief first provides a description of the SEP identified in Paragraph 5 of the Consent Agreement. It then provides an explanation regarding the manner in which the proposed SEP is not an existing compliance requirement of subpart KKK and, therefore, qualifies as a SEP.

A. Summary of the Proposed Supplemental Environmental Project

Respondent's proposed SEP consists of the installation of a flare device on the outlet of its Brundage Canyon Gas Plant (Brundage Plant). This flare device will control emissions (via combustion) of fugitive VOC releases that are not subject to existing control requirements. Currently, a casing gas gathering system from Respondent's Duchesne County Production Field collects casing gas which is sent to the Brundage Plant. Discharge from the Brundage Plant is then sent to a pipeline operated by Questar. On occasion, Questar curtails or shuts in gas from the Brundage Plant requiring the Brundage Plant to either curtail its operations or shut down. These conditions can result in gathering system pressure buildup. Of concern, pressure can build to a point where casing gas vents to the atmosphere at individual wells in the well field. These events generally occur for only a few hours duration which does not provide sufficient time to shut in individual wells.

By installing a flare located downstream of the Brundage Plant and upstream of the Questar pipeline, the Brundage Plant can continue operating during Questar pipeline upset conditions. Accordingly, installation of the proposed SEP flare will mitigate gathering system overpressure and gas venting at individual wells in the well field. Thus, the proposed SEP provides the benefit of reducing overall emissions not previously controlled.

B. The Proposed SEP Flare Is Not Required To Comply With Subpart KKK.

Subpart KKK establishes control of fugitive VOC emissions from specific equipment identified in subpart KKK, such as valves, connectors, pumps, sampling connections and

pressure relief devices. Under this subpart, subject facilities are required to control emissions from this equipment by implementing a leak detection and repair (LDAR) program. Specifically, under subpart KKK, 40 C.F.R. section 60.632 (a), an owner or operator is required to comply with the leak detection and reporting requirements of Section 60.482-1 (a), (b) and (d) and Sections 60.482-2 through 60.482-10 (these regulatory provisions are in subpart VV.) Sections 60.482-1(a), (b) and (d), in turn, require the owner and operator to demonstrate compliance with requirements of Sections 60.482-1 through 60.482-10. These later sections identify and apply to specific types of equipment: Section 60.482-2 applies to "pumps in light liquid service"; Section 60.482-3 applies to" compressors"; Section 60.482-4 applies to "pressure relief devices in gas/vapor service"; Section 60.482-5 applies to "sampling connection systems"; Section 60.482-6 applies to "open-ended valves or lines"; Section 60.482-7 applies to "valves in gas/vapor service and in light liquid service; Section 60.482-8 applies to "pumps, valves and connectors in heavy liquid service and pressure relief devices in light liquid or heavy liquid service"; Section 60.482-9 describes "delay of repair" requirements and Section 60.482-10 applies to "closed vent systems and control devices." Further, subpart KKK provides for test methods and procedures (Section 60.632 (d) and Section 60.485); and recordkeeping requirements (Sections 60.632(e), 60.486 and 60.487).

In short, subpart KKK controls pollution (here, fugitive VOC emissions from onshore natural gas processing plants) by requiring detection and repair of gas leaks from *specified equipment*. Subpart KKK does not require installation and operation of a pollution control device in order to comply. Finally and of great importance, a gas well and associated equipment is not subject to subpart KKK since (1) the subpart establishes standards for onshore natural gas processing plants (a field well is not a processing plant) and (2) a gas well and associated gas gathering equipment is not on the list of specified equipment within subpart KKK.

Subpart KKK does not apply to wellhead casing gas vented at a gas well in a gas field, regardless of cause. A gas well in a gas field and associated gas gathering equipment does not constitute an onshore natural gas processing plant (subpart KKK *only* applies to such plants.) Also, there are no existing federal, state or tribal compliance requirements that direct Respondent to control these potential emissions.

C. The Proposed SEP Flare is Not a Flare Described in Section 60.633(g).

Section 60.633 of subpart KKK, 40 C.F.R. section 60.633, provides allowable exceptions to certain monitoring requirements of pressure relief devices under certain circumstances. (Section 60.633(b)(1)) One such exception is the use of a flare under Section 60.633(g) for pressure relief valves equipped with a closed vent system. (Sections 60.633(b)(1), 60.633, 60.482-4(c), 60, 60.6333.482-10(d)) Subpart KKK does not require use of a flare- it does allow, in lieu of detecting and repairing leaks, use of a flare as an alternative compliance method in the limited circumstance that an onshore natural gas processing plant's pressure relief valves are equipped with a closed vent system.

The Brundage Plant equipment subject to LDAR requirements does not vent to a closed vent system. If it did, Berry Petroleum could elect, at its option, to comply with LDAR by use of a flare. However, since the Brundage Plant's pressure relief valves do not vent to a closed vent system, Berry Petroleum does not have the option to comply with subpart KKK for subject equipment by use of a flare.

The proposed SEP flare will not be connected to the Brundage Plant equipment subject to subpart KKK. Rather, the proposed SEP flare will allow the Brundage Plant to continue operation during Questar pipeline upset conditions, avoid pressure buildup, and control gas emissions that are otherwise not subject to control. As such, even with the installation of the

proposed SEP flare, Berry Petroleum remains obligated to comply with the monitoring and reporting requirements of Subpart KKK.

In sum, subpart KKK requires monitoring, reporting and repairing potential leaks from certain specified equipment. It does not regulate wellhead casing gas released at the wellhead. The flare referred to in Section 60.633(g) is not required by subpart KKK, but can be used *as an alternative* to the monitoring and reporting requirements for pressure relief devices in the limited circumstances described above.

The SEP flare will not be installed for this alternative purpose, but rather for the purpose of allowing the Brundage Plant to continue operating during a pipeline upset condition. Important goals are obtained by installation of the SEP flare: safely continuing processing plant operations (by preventing pressure buildup) and assuring at least 98% destruction of VOC wellhead releases that are not subject to regulation at present.

Conclusion

Since the proposed SEP flare is not mandated by subpart KKK, other federal, state or local laws or regulations, it is eligible for SEP consideration in accordance with EPA's SEP policies and guidance documents. The parties therefore request that the Consent Agreement, including the subject SEP, be approved and incorporated into a Final Order.

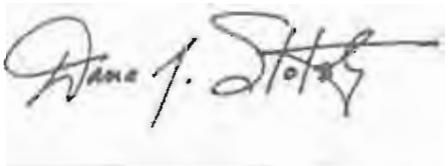
Dated: September 10, 2009

Musick, Peeler & Garrett LLP

By _____

Gregory J. Patterson
Attorneys for Respondent
Berry Petroleum Company

Dated: September 10, 2009 Complainant U.S. EPA Region 8



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the EXPLANATORY BRIEF OF THE PARTIES REGARDING SUPPLEMENTAL ENVIRONMENTAL PROJECT PROPOSED IN THE CONSENT AGREEMENT, was hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street; Denver, Colorado 80202-1129, and that a true copy of the same was sent via U.S. Postal Service, postage prepaid, to

Gregory J. Patterson, Esq.
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One Wilshire Boulevard, Suite 2000
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And also via e-mail transmission to:

G.Patterson@MPGLAW.com

Date: September 10, 2009 By: 

Dana J. Stotsky