



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8  
1595 WYNKOOP STREET  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

September 27, 2007

Ref: 8ENF-L

**SENT VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

The Prentice-Hall Corporation System, Inc.  
Registered Agent for Merit Energy Company  
1821 Logan Avenue  
Cheyenne, WY 82001

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 Registered Agent:

Enclosed please find an Administrative Complaint and Notice of Opportunity for Hearing (complaint) issued to Merit Energy Company by the U.S. Environmental Protection Agency (EPA) pursuant to its authority under section 311(b)(6)(B)(i) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6)(B)(i). The complaint is based on alleged violations of the oil pollution prevention regulations set forth at 40 C.F.R. part 112 at the Powell Pressure Maintenance Unit Central Battery Facility in Converse County, Wyoming, owned and operated by Merit Energy Company.

Specifically, the complaint alleges that Merit Energy Company failed to prepare and implement a Spill Prevention, Control and Countermeasures (SPCC) plan for the facility in accordance with 40 C.F.R. §§ 112.7 and 112.8 as required by 40 C.F.R. § 112.3. EPA discovered the violations during a review of the facility's response to an information request issued pursuant to section 308 of the Act, 33 U.S.C. § 1318, and accompanying SPCC plan dated August 9, 2004. The complaint proposes a penalty of \$31,520 based on the alleged violations.

Merit Energy Company (Company) has the right to a hearing to contest the factual allegations in the complaints. If the Company admits the allegations, or the allegations are found to be true after having had an opportunity for a hearing, the Company has the right to contest the penalty proposed in the complaint. A copy of EPA's administrative procedures is enclosed for the Company's review. Please note the requirements for an answer set forth in 40 C.F.R. §§ 22.15 and



22.38. If the Company wishes to contest the allegations or the penalties proposed in the complaint, it must file a written answer within thirty (30) days of receipt of the enclosed complaint with the EPA Regional Hearing Clerk at the following address:

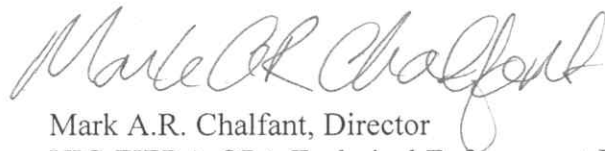
Ms. Tina Artemis, Regional Hearing Clerk (8RC)  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

If the Company does not file an answer by the applicable deadline, it will have defaulted and each allegation in the complaint will be deemed to be admitted as true. The Company will have waived its right to appear in this action for any purpose and will also have waived its right to be notified of any Agency proceedings that occur before a civil penalty may be imposed. Provided that the complaint is legally sufficient, EPA may file a motion for default for the amount proposed in the complaint.

Whether or not the Company requests a hearing, it may confer informally with EPA concerning the alleged violations or the proposed penalty amount. The Company has the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but it is not required. A request for an informal conference does not extend the thirty (30) day period for filing the answer and/or requesting a hearing.

If the Company has any questions, the most knowledgeable people on my staff regarding this matter are Amy Swanson and Donna Inman. Ms. Swanson is in our Legal Enforcement Program and can be reached at (303) 312-6906. Ms. Inman is in our UIC-FIFRA-OPA Technical Enforcement Program and can be reached at (303) 312-6201.

Sincerely,



Mark A.R. Chalfant, Director  
UIC-FIFRA-OPA Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures: Complaint and Notice of Opportunity for Hearing  
Consolidated Rules of Practice, 40 C.F.R. Part 22  
SBREFA Information Sheet  
Notice of SEC Disclosure

cc: Ken Ivie, Production Foreman, Merit Energy Company-Gillette Office  
Dennis Longwell, Operations Manager, Merit Energy Company-Gillette Office  
Renee Parsons, North Division Regulatory Supervisor

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2007 SEP 26 AM 8:40

IN THE MATTER OF: )  
)  
Merit Energy Company )  
13727 Noel Road, Suite 500 )  
Dallas, TX 75240 )  
)  
(Powell Pressure Maintenance Unit )  
SWNE Sec. 26, T40N, R74W, )  
Converse County, Wright, WY) )  
)  
Respondent. )

Docket No. **CWA-08-2007-0027**

ADMINISTRATIVE COMPLAINT AND  
OPPORTUNITY TO REQUEST HEARING

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

EPA REGION VIII  
HEARING CLERK

**AUTHORITY**

1. This is a civil administrative action issued under the authority vested in the Administrator of the Environmental Protection Agency (EPA) by section 311(b)(6)(B)(i) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990. The Administrator has properly delegated this authority to the undersigned EPA official. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules) set forth at 40 C.F.R. part 22, a copy of which is enclosed.

**GENERAL ALLEGATIONS**

2. 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.

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

4. 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.

5. 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.

6. 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).

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

8. 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).

9. The facility is a “non-transportation related” “onshore facility” within the meaning of 40 C.F.R. § 112.2.

10. 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.

11. 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 C.F.R. § 110.1.

12. 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 ...."

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

14. 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 C.F.R. § 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.

15. The facility is subject to the oil pollution prevention requirements of 40 C.F.R. part 112, pursuant to section 311(j) of the Act, 33 U.S.C. § 1321(j), and its implementing regulations.

16. 40 C.F.R. § 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.

17. Section 311(b)(6)(A) of the Act, 33 U.S.C. § 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.

18. 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.

19. On May 10, 2007, EPA issued Respondent a request for information pursuant to section 308 of the Act, 33 U.S.C. § 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 C.F.R. part 112.

20. 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.

21. 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 C.F.R. §112.7(c) and 112.9(c)(2)

22. The August 9, 2004 SPCC plan was reviewed and found to be inadequate as follows:
- a. Inadequate facility diagram in accordance with 40 C.F.R. § 112.7(a)(3);
  - b. Inadequate discharge predictions in accordance with 40 C.F.R. § 112.7(b);
  - c. No procedure to confine drainage from undiked areas in a catchment basin or holding pond in accordance with 40 C.F.R. § 112.9(c)(2);
  - d. No procedures for visually inspecting foundations and supports for signs of deterioration and maintenance needs in accordance with 40 C.F.R. § 112.9(c)(3); and
  - e. No procedures to inspect saltwater disposal facilities in accordance with 40 C.F.R. § 112.9(d)(2).

23. The Respondent failed to prepare and implement an SPCC plan for the facility in accordance with the regulations at 40 C.F.R. § 112.7 and 112.8 as required by 40 C.F.R. § 112.3.

24. Respondent's failure to prepare and implement an SPCC plan in accordance with the regulations at 40 C.F.R. §§ 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 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.

#### **PROPOSED PENALTY**

As alleged in the preceding paragraphs, and pursuant to section 311(b)(6)(B)(i) of the Act, 33 U.S.C. §1321(b)(6)(B)(i), and 40 C.F.R. § 19.4, the Respondent is liable for civil penalties of up to \$11,000 per day for each day during which the violation continues, up to a maximum total of \$157,500 for all violations. Complainant proposes the assessment of administrative penalties against the Respondent in the amount of **\$31,520**. Complainant proposes this penalty amount after considering the applicable statutory penalty factors in section

311(b)(8) of the Act, 33 U.S.C. §1321(b)(8): the seriousness of the violations, the economic benefit to the violator 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 the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other factors as justice may require. Specifically, the proposed penalty amount is based on Respondent's moderate non-compliance and moderate environmental impact for a duration of at least twelve (12) months. No additions were made to the proposed penalty amount based on either a history of violations or economic benefit.

**TERMS OF PAYMENT FOR QUICK RESOLUTION**

If Respondent does not contest the findings and penalty proposal set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within thirty (30) calendar days of receipt of this Complaint, no Answer need be filed. For more time for payment, Respondent may file a statement agreeing to pay the penalty within thirty (30) days of receipt of the Complaint, then pay the money within 60 days of such receipt. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of the case, referencing "Oil Spill Liability Trust Fund-311," for the amount, payable to the : "**Environmental Protection Agency,**" to:

**US checks by regular  
US postal service mail:**

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



**Federal Express, Airborne,  
Or other commercial carrier:**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

**Wire transfers:**

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read "D  
68010727 Environmental Protection Agency "

**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 simultaneously sent to:

Donna K. Inman (8ENF-U)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

Payment of the penalty in this manner does not relieve Respondent of its obligation to comply with the requirements of the statute and 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.

#### **OPPORTUNITY TO REQUEST A HEARING**

As provided in the Act, you have the right to a public hearing to contest this Complaint. If you (1) contest the factual claims made in this Complaint; (2) contest the appropriateness of the proposed penalty; and/or (3) assert that you are entitled to judgment as a matter of law, you must file a written Answer in accordance with sections 22.15 and 22.38 of the Consolidated Rules within thirty (30) calendar days after receipt of this Complaint. Your Answer must (1)

clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which you have knowledge; (2) state circumstances or arguments which are alleged to constitute grounds for defense; (3) state the facts you dispute; (4) the basis for opposing the proposed relief; and (5) specifically request an administrative hearing, if desired. Failure to admit, deny, or explain any material factual allegation in this Complaint will constitute an admission of the allegation.

The Answer and one copy must be sent to:

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

and a copy must be sent to the following attorney:

Amy Swanson, Enforcement Attorney (8ENF-L)  
U.S. EPA Region 8, Legal Enforcement Program  
1595 Wynkoop Street  
Denver, CO 80202-1129  
Telephone: (303) 312-6906

IF YOU FAIL TO REQUEST A HEARING, YOU WILL WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF YOU FAIL TO FILE A WRITTEN ANSWER OR PAY THE PROPOSED PENALTY WITHIN THE THIRTY (30) CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 CFR §22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.


### **SETTLEMENT CONFERENCE**

The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations and is willing to explore this possibility in an informal settlement conference. If you or your attorney, if you choose to be

represented by one, have any questions or wish to have an informal settlement conference with EPA, please call Senior Enforcement Attorney Amy Swanson at (303) 312-6906. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in the Consolidated Rules. If a settlement can be reached, its terms must be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Regional Judicial Officer.

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

Date: 9/27/2007

  
\_\_\_\_\_  
David J. Janik, Acting Director  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Date: 9/27/07

  
\_\_\_\_\_  
Mark A.R. Chalfant, Director  
UIC-FIFRA-OPA Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the original and one copy of the ADMINISTRATIVE COMPLAINT AND OPPORTUNITY TO REQUEST HEARING was hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent via certified mail to:

The Prentice-Hall Corporation System, Inc.  
Registered Agent for Merit Energy Company  
1821 Logan Avenue  
Cheyenne, WY 82001

9/28/07

Date

  
Judith McTernan