



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

Ref: 8ENF-L

APR 20 2009

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

The Corporation Company  
Registered Agent for  
Berry Petroleum Company  
1675 Broadway, Suite 1200  
Denver, CO 80202

**Docket No. CAA-08-2009-0013**

Re: Administrative Penalty Complaint under the  
Clean Air Act, Brundage Gas Plant, Duchesne  
County, Utah.

Dear Agent:

Enclosed is a complaint and notice of opportunity for hearing for violations of the Clean Air Act having to do with required leak detection and repair requirements at Berry Petroleum's Brundage Gas Processing Plant in Duchesne County, Utah.

The complaint proposes a penalty of \$207,228.00. Information on how and when to contest the facts or proposed penalty are contained in the complaint. Please note that there is a 30-day time period by which you must act to contest the contents of the complaint.

**Also note that under the Rules of Practice, you may just send in a check for that amount to settle the proceeding, without the need for a settlement agreement. 40 C.F.R. § 22.18.**

Thank you for your cooperation. Please have the company contact me for further discussion or questions. I may be reached at (303) 312-6905, in writing at the address on the letterhead above, or via e-mail at [stotsky.dana@epa.gov](mailto:stotsky.dana@epa.gov).

Sincerely,

Dana J. Stotsky  
Senior Enforcement Attorney



Printed on Recycled Paper

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

Docket No. CAA-08-2009-0013

IN THE MATTER OF:	)	
	)	
BERRY PETROLEUM COMPANY	)	COMPLAINT AND NOTICE OF
950 17 <sup>TH</sup> ST., SUITE 2400	)	OPPORTUNITY FOR HEARING
DENVER, CO 80202	)	
	)	
Respondent.	)	

INTRODUCTION (JURISDICTION)

1. This civil administrative enforcement action is authorized by Congress in section 113(d)(1)(B) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d) (1)(B). The rules for this proceeding are 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 (*Rules of Practice*,) 40 C.F.R. part 22, a copy of which is enclosed (attached hereto as Exhibit 1.)
2. The undersigned EPA officials have been properly delegated the authority to issue this action. See Regional Delegation 7-6-A, dated 12/20/1996 (attached hereto as Exhibit 3.)
3. In this matter, the EPA’s Administrator and the Attorney General of the United States, through authorized delegation, have jointly determined that the matter herein is appropriate for administrative penalty action. 42 U.S.C. § 7413(d)(1). (See Letter dated September 19, 2008 from Robert D. Brook, Assistant Chief, U.S. Department of Justice, to Andrew M. Gaydosh, Assistant Regional Administrator, US E.P.A., and attached hereto as Exhibit 4.)
4. Generally, and as set out specifically below, EPA alleges that Berry Petroleum Company (“Respondent” or “Berry”) has violated the implementing regulations associated with the “New Source Performance Standards,” Section 111 of the CAA, 42 U.S.C. § 7411, and implementing regulations promulgated in part at 40 C.F.R. Part 60, Subpart KKK (STANDARDS OF PERFORMANCE FOR EQUIPMENT LEAKS OF VOC FROM ONSHORE NATURAL GAS PROCESSING PLANTS) for violations occurring at Berry’s Brundage Gas Processing Plant in Duchesne County, Utah. Generally, EPA alleges Respondent violated the CAA by failing to timely test equipment within six months of startup, by failing to timely report performance on a semi-annual basis, by failing to properly identify required equipment inventory in the first semi-annual report, and by failing to include facts that explain each delay of repair

where applicable in any required semi-annual report. The CAA authorizes the assessment of a civil penalty for violations of the CAA. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. Part 19.

### **NOTICE OF OPPORTUNITY FOR A HEARING**

5. Respondent has the right to a public hearing before an administrative law judge (ALJ) to disagree with (1) any fact stated (alleged) by EPA in the complaint, or (2) the appropriateness of the proposed penalty.
6. To disagree with the complaint and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk (1595 Wynkoop Street; Denver, Colorado 80202-1129) within 30 days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please *see* Section 22.15 of the *Rules of Practice* for a complete description of what must be in your answer.

**FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.**

### **QUICK RESOLUTION**

7. Respondent may resolve this proceeding at any time by paying the specific penalty of **\$207,228.00** proposed in this complaint. Such payment need not contain any response to, or admission of, the allegations in the Complaint. Such payment constitutes a waiver of respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the *Rules of Practice* for a full explanation of the quick resolution process. This payment shall be made by remitting a cashier's or certified check for that amount, payable to "Treasurer, United States of America," to:

#### Regular Mail

U. S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P. O. Box 979077  
St. Louis, MO 63197-9000

or

#### Federal Express, Airborne, or other commercial carrier:

U.S. Bank  
1005 Convention Plaza

Mail Station SL-MO-C2GL  
St. Louis, MO 63101.

A copy of the check must be sent to the Regional Hearing Clerk and also to Dana J. Stotsky, Senior Enforcement Attorney, at the addresses provided below.

### SETTLEMENT NEGOTIATIONS

8. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Dana J. Stotsky, Esq., at 1-800-227-8917; extension 6905, or 303-312-6905, or the address below. *Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.*

### DEFINITIONS AND REGULATORY EXCERPTS

9. The federal regulations provide in part as noted:

#### **Subpart KKK—Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.**

##### **§ 60.630 Applicability and designation of affected facility.**

(a)(1) The provisions of this subpart apply to affected facilities in onshore natural gas processing plants.

(2) A compressor in VOC service or in wet gas service is an affected facility.

(3) The group of all equipment except compressors (defined in §60.631) within a process unit is an affected facility.

(b) Any affected facility under paragraph (a) of this section that commences construction, reconstruction, or modification after January 20, 1984, is subject to the requirements of this subpart.

(c) Addition or replacement of equipment (defined in §60.631) for the purpose of process improvement that is accomplished without a capital expenditure shall not by itself be considered a modification under this subpart.

(d) Facilities covered by subpart VV or subpart GGG of 40 CFR part 60 are excluded from this subpart.

(e) A compressor station, dehydration unit, sweetening unit, underground storage tank, field gas gathering system, or liquefied natural gas unit is covered by this subpart if it is located at an onshore natural gas processing plant. If the unit is not located at the plant site, then it is exempt from the provisions of this subpart.

**§ 60.631 Definitions.**

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act, in subpart A or subpart VV of part 60; and the following terms shall have the specific meanings given them.

**Equipment** means each pump, pressure relief device, open-ended valve or line, valve, compressor, and flange or other connector that is in VOC service or in wet gas service, and any device or system required by this subpart.

**Field gas** means feedstock gas entering the natural gas processing plant.

**In light liquid** service means that the piece of equipment contains a liquid that meets the conditions specified in §60.485(e) or §60.633(h)(2).

**In wet gas service** means that a piece of equipment contains or contacts the field gas before the extraction step in the process.

**Natural gas liquids** means the hydrocarbons, such as ethane, propane, butane, and pentane, that are extracted from field gas.

**Natural gas processing plant** (gas plant) means any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of mixed natural gas liquids to natural gas products, or both.

**Nonfractionating plant** means any gas plant that does not fractionate mixed natural gas liquids into natural gas products.

**Onshore** means all facilities except those that are located in the territorial seas or on the outer continental shelf.

**Process unit** means equipment assembled for the extraction of natural gas liquids from field gas, the fractionation of the liquids into natural gas products, or other operations associated with the processing of natural gas products. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the products.

*Reciprocating compressor* means a piece of equipment that increases the pressure of a process gas by positive displacement, employing linear movement of the driveshaft.

**§ 60.632 Standards.**

(a) Each owner or operator subject to the provisions of this subpart shall comply with the requirements of §§60.482-1 (a), (b), and (d) and 60.482-2 through 60.482-10, except as provided in §60.633, as soon as practicable, but no later than 180 days after initial startup.

(b) An owner or operator may elect to comply with the requirements of §§60.483-1 and 60.483-2.

(c) An owner or operator may apply to the Administrator for permission to use an alternative means of emission limitation that achieves a reduction in emissions of VOC at least equivalent to that achieved by the controls required in this subpart. In doing so, the owner or operator shall comply with requirements of §60.634 of this subpart.

(d) Each owner or operator subject to the provisions of this subpart shall comply with the provisions of §60.485 except as provided in §60.633(f) of this subpart.

(e) Each owner or operator subject to the provisions of this subpart shall comply with the provisions of §§60.486 and 60.487 except as provided in §§60.633, 60.635, and 60.636 of this subpart.

(f) An owner or operator shall use the following provision instead of §60.485(d)(1): Each piece of equipment is presumed to be in VOC service or in wet gas service unless an owner or operator demonstrates that the piece of equipment is not in VOC service or in wet gas service. For a piece of equipment to be considered not in VOC service, it must be determined that the VOC content can be reasonably expected never to exceed 10.0 percent by weight. For a piece of equipment to be considered in wet gas service, it must be determined that it contains or contacts the field gas before the extraction step in the process. For purposes of determining the percent VOC content of the process fluid that is contained in or contacts a piece of equipment, procedures that conform to the methods described in ASTM E169-63, 77, or 93, E168-67, 77, or 92, or E260-73, 91, or 96 (incorporated by reference as specified in §60.17) shall be used.

**§ 60.633 Exceptions.**

(a) Each owner or operator subject to the provisions of this subpart may comply with the following exceptions to the provisions of subpart VV.

(b)(1) Each pressure relief device in gas/vapor service may be monitored quarterly and within 5 days after each pressure release to detect leaks by the methods specified in §60.485(b) except as provided in §60.632(c), paragraph (b)(4) of this section, and §60.482-4 (a) through (c) of subpart VV.

(2) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(3)(i) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after it is detected, except as provided in §60.482-9.

(ii) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(4)(i) Any pressure relief device that is located in a nonfractionating plant that is monitored only by nonplant personnel may be monitored after a pressure release the next time the monitoring personnel are on site, instead of within 5 days as specified in paragraph (b)(1) of this section and §60.482-4(b)(1) of subpart VV.

(ii) No pressure relief device described in paragraph (b)(4)(i) of this section shall be allowed to operate for more than 30 days after a pressure release without monitoring.

(c) Sampling connection systems are exempt from the requirements of §60.482-5.

(d) Pumps in light liquid service, valves in gas/vapor and light liquid service, and pressure relief devices in gas/vapor service that are located at a nonfractionating plant that does not have the design capacity to process 283,200 standard cubic meters per day (scmd) (10 million standard cubic feet per day) or more of field gas are exempt from the routine monitoring requirements of §§60.482-2(a)(1) and 60.482-7(a), and paragraph (b)(1) of this section.

(e) Pumps in light liquid service, valves in gas/vapor and light liquid service, and pressure relief devices in gas/vapor service within a process unit that is located in the Alaskan North Slope are exempt from the

routine monitoring requirements of §§60.482-2(a)(1), 60.482-7(a), and paragraph (b)(1) of this section.

(f) Reciprocating compressors in wet gas service are exempt from the compressor control requirements of §60.482-3.

(g) Flares used to comply with this subpart shall comply with the requirements of §60.18.

(h) An owner or operator may use the following provisions instead of §60.485(e):

(1) Equipment is in heavy liquid service if the weight percent evaporated is 10 percent or less at 150 °C (302 °F) as determined by ASTM Method D86-78, 82, 90, 95, or 96 (incorporated by reference as specified in §60.17).

(2) Equipment is in light liquid service if the weight percent evaporated is greater than 10 percent at 150 °C (302 °F) as determined by ASTM Method D86-78, 82, 90, 95, or 96 (incorporated by reference as specified in §60.17).

#### **§ 60.634 Alternative means of emission limitation.**

(a) If, in the Administrator's judgment, an alternative means of emission limitation will achieve a reduction in VOC emissions at least equivalent to the reduction in VOC emissions achieved under any design, equipment, work practice or operational standard, the Administrator will publish, in the Federal Register a notice permitting the use of that alternative means for the purpose of compliance with that standard. The notice may condition permission on requirements related to the operation and maintenance of the alternative means.

(b) Any notice under paragraph (a) of this section shall be published only after notice and an opportunity for a public hearing.

(c) The Administrator will consider applications under this section from either owners or operators of affected facilities, or manufacturers of control equipment.

(d) The Administrator will treat applications under this section according to the following criteria, except in cases where he concludes that other criteria are appropriate:



(1) The applicant must collect, verify and submit test data, covering a period of at least 12 months, necessary to support the finding in paragraph (a) of this section.

(2) If the applicant is an owner or operator of an affected facility, he must commit in writing to operate and maintain the alternative means so as to achieve a reduction in VOC emissions at least equivalent to the reduction in VOC emissions achieved under the design, equipment, work practice or operational standard.

**§ 60.635 Recordkeeping requirements.**

(a) Each owner or operator subject to the provisions of this subpart shall comply with the requirements of paragraphs (b) and (c) of this section in addition to the requirements of §60.486.

(b) The following recordkeeping requirements shall apply to pressure relief devices subject to the requirements of §60.633(b)(1) of this subpart.

(1) When each leak is detected as specified in §60.633(b)(2), a weatherproof and readily visible identification, marked with the equipment identification number, shall be attached to the leaking equipment. The identification on the pressure relief device may be removed after it has been repaired.

(2) When each leak is detected as specified in §60.633(b)(2), the following information shall be recorded in a log and shall be kept for 2 years in a readily accessible location:

(i) The instrument and operator identification numbers and the equipment identification number.

(ii) The date the leak was detected and the dates of each attempt to repair the leak.

(iii) Repair methods applied in each attempt to repair the leak.

(iv) "Above 10,000 ppm" if the maximum instrument reading measured by the methods specified in paragraph (a) of this section after each repair attempt is 10,000 ppm or greater.

(v) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(vi) The signature of the owner or operator (or designate) whose decision it was that repair could not be effected without a process shutdown.

(vii) The expected date of successful repair of the leak if a leak is not repaired within 15 days.

(viii) Dates of process unit shutdowns that occur while the equipment is unrepaired.

(ix) The date of successful repair of the leak.

(x) A list of identification numbers for equipment that are designated for no detectable emissions under the provisions of §60.482-4(a). The designation of equipment subject to the provisions of §60.482-4(a) shall be signed by the owner or operator.

(c) An owner or operator shall comply with the following requirement in addition to the requirement of §60.486(j): Information and data used to demonstrate that a reciprocating compressor is in wet gas service to apply for the exemption in §60.633(f) shall be recorded in a log that is kept in a readily accessible location.

#### **§ 60.636 Reporting requirements.**

(a) Each owner or operator subject to the provisions of this subpart shall comply with the requirements of paragraphs (b) and (c) of this section in addition to the requirements of §60.487.

(b) An owner or operator shall include the following information in the initial semiannual report in addition to the information required in §60.487(b) (1)—(4): Number of pressure relief devices subject to the requirements of §60.633(b) except for those pressure relief devices designated for no detectable emissions under the provisions of §60.482-4(a) and those pressure relief devices complying with §60.482-4(c).

(c) An owner or operator shall include the following information in all semiannual reports in addition to the information required in §60.487(c)(2) (i) through (vi):

(1) Number of pressure relief devices for which leaks were detected as required in §60.633(b)(2) and

(2) Number of pressure relief devices for which leaks were not repaired as required in §60.633(b)(3).

**§ 60.482-1a Standards: General.**

(a) Each owner or operator subject to the provisions of this subpart shall demonstrate compliance with the requirements of §§60.482-1a through 60.482-10a or §60.480a(e) for all equipment within 180 days of initial startup.

**§ 60.487 Reporting requirements.**

(a) Each owner or operator subject to the provisions of this subpart shall submit semi-annual reports to the Administrator beginning six months after the initial startup date.

(b) The initial semiannual report to the Administrator shall include the following information:

(1) Process unit identification.

(2) Number of valves subject to the requirements of §60.482-7, excluding those valves designated for no detectable emissions under the provisions of §60.482-7(f).

(3) Number of pumps subject to the requirements of §60.482-2, excluding those pumps designated for no detectable emissions under the provisions of §60.482-2(e) and those pumps complying with §60.482-2(f).

(4) Number of compressors subject to the requirements of §60.482-3, excluding those compressors designated for no detectable emissions under the provisions of §60.482-3(i) and those compressors complying with §60.482-3(h).

(c) All semiannual reports to the Administrator shall include the following information, summarized from the information in §60.486:

(1) Process unit identification.

(2) For each month during the semiannual reporting period,

(i) Number of valves for which leaks were detected as described in §60.482-7(b) or §60.483-2,

(ii) Number of valves for which leaks were not repaired as required in §60.482-7(d)(1),

(iii) Number of pumps for which leaks were detected as described in §60.482-2(b), (d)(4)(ii)(A) or (B), or (d)(5)(iii),

(iv) Number of pumps for which leaks were not repaired as required in §60.482-2(c)(1) and (d)(6),

(v) Number of compressors for which leaks were detected as described in §60.482-3(f),

(vi) Number of compressors for which leaks were not repaired as required in §60.482-3(g)(1), and

(vii) The facts that explain each delay of repair and, where appropriate, why a process unit shutdown was technically infeasible.

(3) Dates of process unit shutdowns which occurred within the semiannual reporting period.

(4) Revisions to items reported according to paragraph (b) if changes have occurred since the initial report or subsequent revisions to the initial report.

(d) An owner or operator electing to comply with the provisions of §§60.483-1 or 60.483-2 shall notify the Administrator of the alternative standard selected 90 days before implementing either of the provisions.

(e) An owner or operator shall report the results of all performance tests in accordance with §60.8 of the General Provisions. The provisions of §60.8(d) do not apply to affected facilities subject to the provisions of this subpart except that an owner or operator must notify the Administrator of the schedule for the initial performance tests at least 30 days before the initial performance tests.

(f) The requirements of paragraphs (a) through (c) of this section remain in force until and unless EPA, in delegating enforcement authority to a State under section 111(c) of the Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such State. In that event, affected sources within the State will be relieved of

the obligation to comply with the requirements of paragraphs (a) through (c) of this section, provided that they comply with the requirements established by the State.

### GENERAL ALLEGATIONS

At all times pertinent to this complaint, the following general allegations apply and are incorporated by this reference into Counts 1 through 4 of this Complaint:

10. EPA has jurisdiction of this matter under section 113 of the Clean Air Act, 42 U.S.C. section 7413 (FEDERAL ENFORCEMENT.)
11. Berry Petroleum Company (Respondent, or Berry,) is a Delaware corporation, registered with the Colorado Secretary of State Office on March 4, 2003, to do business for a perpetual term in the State of Colorado as a foreign corporation, and possesses currently the status of good standing with that office.
12. Berry registered with the Utah Secretary of State Office on April 23, 2003, to operate as a foreign for-profit corporation in the state of Utah, and possesses currently the status of good standing with that office.
13. Respondent is a "person" as that term is defined by section 302(e) of the CAA, 42 U.S.C. Section 7602(e), and thus subject to regulation.
14. Respondent owns and operates the Brundage Gas Processing Plant, located on Section 12, Township 5 South, Range 4 West, in Duchesne County, Utah.
15. Subpart KKK of 40 C.F.R. part 60 - Standards of Performance for Equipment Leaks of VOC From On Shore Natural Gas Processing Plants applies to the natural gas liquids process at Berry's Brundage Plant. The affected natural gas liquids process started up on or about March 16, 2006.
16. EPA first became aware of this facility by a letter dated April 27, 2006, from Berry giving notice of the startup of its Brundage Gas Plant on or about March 16, 2006.
17. Facilities subject to Subpart KKK requirements must submit to EPA a leak detection and repair ("LDAR") report, as specified in 40 C.F.R. §60.636.

## **Count 1**

**(Berry, as an owner/operator, Failed to Demonstrate Compliance with the Requirements of §§60.482-1 through 60.482-10 for all equipment within six months of initial startup)**

18. Berry is currently, and at all times relevant hereto, the owner and operator of its Brundage Gas Plant.
19. The initial start up of Berry's Brundage Gas Plant was on or about March 16, 2006.
20. Berry was required by rule to implement a leak detection and repair program within six months of startup. NSPS Subparts KKK and VV.
21. Berry failed to demonstrate timely compliance with the leak detection and repair requirements of NSPS Subparts KKK and VV within six months of startup, which would have been on or about September 16, 2006.
22. Berry, by failing to comply with compliance demonstration requirements as set out above, has violated Section 113 of the CAA, 42 U.S.C. §7413.

## **Count 2**

**(Berry's Initial Semiannual LDAR Report was Submitted Late and also Failed to Include Required Reporting Items)**

23. Berry is currently, and at all times relevant hereto, the owner and operator of its Brundage Gas Plant.
24. The initial start up of Berry's Brundage Gas Plant was on or about March 16, 2006.
25. Six months after start up of Berry's Brundage Gas Plant was on or about September 16, 2006.
26. Berry was required by rule to file its initial semiannual report to the Administrator for leak detection and repair (LDAR) beginning six months after the initial startup date, which was on or about September 16, 2006. 40 CFR §60.487.
27. Berry Petroleum did not submit its initial semiannual LDAR report to EPA until October 1, 2007, 384 days after such submission was required (late reporting.)
28. Berry's initial semiannual LDAR report, referenced in the preceding paragraph, failed to include required information including applicable process unit identification, which is required by 40 C.F.R. §60.487(b), the number of valves subject to 40 C.F.R. §60.482-7, the number of pumps subject to 40 C.F.R. §60.482-2, and the number of compressors subject to 40 C.F.R. §60.482-3 (incomplete reporting.)

29. Berry, by failing to timely submit its first semi-annual LDAR report as set out above, and also Berry, by failing to include required information in the report as set out above, has violated Section 113 of the CAA, 42 U.S.C. §7413.

### **Count 3**

#### **(Berry's Second Semiannual LDAR Report was Submitted Late and Failed to Include Required Facts)**

30. Berry's second semiannual LDAR report was due to be filed six months after its initial semiannual report, or on or about March 16, 2007.
31. Berry submitted its second semiannual LDAR report on or about October 1, 2007.
32. Berry's second semiannual LDAR report, identified in the preceding paragraph, identified that leaks occurred, and failed to include required facts that explain delay of repair, dates of repair, monitoring of repairs, and so on, regarding the identified leaks.
33. Berry, by failing to timely submit its second semiannual LDAR report as described above, and also Berry, by failing to include required facts in the report as described above, has violated Section 113 of the CAA, 42 U.S.C. §7413.

#### **PROPOSED CIVIL PENALTY**

The proposed civil penalty has been determined in accordance with Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B). This section and 40 C.F.R. Part 19 authorize the assessment of a civil penalty of up to \$25,000 per day for each violation occurring on or before January 30, 1997; \$27,500 per day for each violation occurring between January 31, 1997, and March 15, 2004; \$32,500 per day for each violation occurring between March 16, 2004, and January 12, 2009; and \$37,500 per day for each violation occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, § 4, 104 Stat. 890 (1990), 28 U.S.C. §2461 (as amended) for each violation of the New Source Performance Standards. For purposes of determining the amount of any civil penalty to be assessed, Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), requires EPA to consider, in addition to such other factors as justice may require, the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

To develop the proposed penalty in this Complaint, Complainant has considered the particular facts and circumstances of this case with specific reference to EPA's "Clean Air Act

Stationary Source Civil Penalty Policy” dated October 25, 1991 (Penalty Policy) including Appendix VI<sup>1</sup>. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors enumerated above to particular cases.

Based upon the facts alleged in this Complaint and upon the statutory factors enumerated above, as known to Complainant at this time, Complainant proposes that Respondent be assessed a penalty of **\$207,228** for the violations alleged in this Complaint. The Clean Air Act Penalty Policy and Complainant’s Air Civil Penalty Worksheet are enclosed with this Complaint and incorporated herein.

Count 1	\$104,068
Count 2	\$64,475
Count 3	\$38,685
<b>TOTAL PENALTY</b>	<b>\$207,228</b>

The ALJ is not bound by EPA’s penalty policy or the penalty proposed by Complainant, and may assess a penalty above the proposed amount, up to the maximum amount authorized in the statute. In this case, the maximum would be substantially in excess of the amount proposed.

To discuss settlement or ask any questions you may have about this process, please contact Dana J. Stotsky, Senior Enforcement Attorney, at 1-800-227-8917; ext. 312-6905, or at the address below.

#### **List of Exhibits**

1. *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*, 40 C.F.R. part 22.
2. Clean Air Act Stationary Source Civil Penalty Policy” dated October 25, 1991.
3. Regional Delegation 7-6-A, dated 12/20/1996.
4. Letter dated September 19, 2008 from Robert D. Brook, Assistant Chief, U.S. Department of Justice, to Andrew M. Gaydosh, Assistant Regional Administrator, US E.P.A.

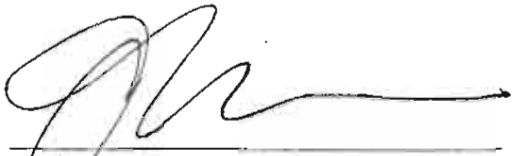
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<sup>1</sup> Appendix VI is entitled “Volatile Hazardous Air Pollutant Penalty Policy” March 2, 1988.




United States Environmental Protection Agency  
Region 8, Office of Enforcement, Compliance  
and Environmental Justice, Complainant  
1595 Wynkoop Street (ENF-L)  
Denver, CO 80202-1129

Date: 4/14/09

By:   
Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

Date: April 13, 2009

By:   
Dana J. Stotsky, Senior Enforcement Attorney  
Legal Enforcement Program, Mail Code: 8ENF-L  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1146  
Colorado Bar # 14717  
Phone: (303) 312-6905  
FAX: (303) 312-6953  
[stotsky.dana@epa.gov](mailto:stotsky.dana@epa.gov)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the original and one copy of the PENALTY COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING with Attachment 1 and with Exhibits 1-4, were 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 Certified Mail, Postage Pre-Paid, to:

THE CORPORATION COMPANY  
Registered Agent for  
Berry Petroleum Company  
1675 Broadway, Suite 1200  
Denver, CO 80202

Date: 4/20/09

By: Judith McTernan  
Judith McTernan