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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE**

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PRYOR OIL CO., INC.

Plaintiff,

v.

THE UNITED STATES OF AMERICA, as represented
by CHRISTINE TODD WHITMAN, in her official
capacity as Administrator of the United States
Environmental Protection Agency, and by JIMMY
PALMER, in his official capacity as Regional
Administrator of EPA Region IV,

Defendant.

Civ. No. 3:02-CV-679
U.S. DISTRICT COURT
EASTERN DISTRICT TENN.
CLERK

COMPLAINT

COMPLAINT

Plaintiff, by and through counsel, hereby respectfully files this Complaint against the Defendant, the United States of America, as represented by Christine Todd Whitman, in her official capacity as Administrator of the United States Environmental Protection Agency (hereinafter "EPA"), and Jimmy Palmer, in his official capacity as Regional Administrator of Region IV of the United States Environmental Protection Agency, and in support thereof respectfully alleges as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action under the United States Constitution, Section 10(a) of the Administrative Procedure Act, 5 U.S.C. § 702, and 28 U.S.C. § 2201, seeking judicial review of and declaratory judgment relief regarding Defendant's actions taken pursuant to Section

311(c) of the Federal Water Pollution Control Act of 1972, as amended, commonly referred to as the Clean Water Act (hereinafter "CWA"). Plaintiff seeks a declaration that Defendant's actions regarding the Howard/White Unit #1 natural gas and oil well (the "Well") violates Plaintiff's constitutional rights, exceed Defendant's statutory jurisdiction and authority, and are arbitrary, capricious and otherwise not in accordance with law. Plaintiff also seeks a temporary restraining order, a preliminary injunction and/or a permanent injunction, prohibiting Defendant from conducting a Mechanical Integrity Test ("MIT") on the Well and/or plugging and abandoning the Well.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 (controversy arising under a federal statute), 28 U.S.C. § 1337 (controversy arising under an Act of Congress regulating commerce), 28 U.S.C. § 2201 (action for declaratory judgment).

3. Venue lies in this district under 28 U.S.C. § 1391(b), (e).

PARTIES

4. Plaintiff Pryor Oil Co., Inc. ("Pryor Oil") is a corporation organized and existing under and by virtue of the laws of the state of Missouri, with its principal offices being located at 136 E. Spring Street, Cookeville, Putnam County, Tennessee.

5. The Defendant, United States of America, has as one of its branches the Environmental Protection Agency ("EPA"). EPA is represented by and acts through its Administrator, Christine Todd Whitman. EPA is organized into geographic regions. EPA Region IV acts through and is represented by its Regional Administrator. On information and belief, the EPA Region IV Acting Regional Administrator is Jimmy Palmer.

GENERAL ALLEGATIONS

6. Friday evening, July 19, 2002, Pryor Oil's drilling contractor performed drilling operations at the Well. When the drilling contractor reached a depth of 2,430 feet, uncontrollable and unprecedented pressure was encountered causing the well to blow out, thereby causing a release of oil and natural gas.

7. An inspector from the Tennessee Department of Environmental Conservation appeared onsite shortly after the blowout. Crews worked through the night Friday and into Saturday morning to contain the released oil.

8. The next morning the oil and gas ignited.

9. Burning oil flowed down gradient in two directions; towards Clear Creek and White Creek, a tributary to Clear Creek. (EPA Removal Order issued to Pryor Oil, August 8, 2002).

10. As the oil moved towards the creek, some flowed into cracks and fissures in the rocky terrain.

11. Immediately after the incident, crews placed booms and absorbent material in the creeks to capture released oil.

12. Saturday afternoon, July 20, 2002, Boots & Coots, having been hired by Pryor Oil to put out the fire, arrived at the Site and began efforts to cap the well.

13. Pryor Oil immediately paid Boots & Coots \$100,000 cash along with a promissory note providing for cash payment of the remaining balance upon completion of the capping operation.

14. Sunday evening, July 21, 2002, EPA's On Scene Coordinator ("OSC") federalized the Site, alleging that the basis for federalizing the Site was the lack of a financial arrangement between Boots & Coots and Pryor Oil.

15. Pryor Oil Co., Inc. had organized a massive cleanup effort to begin at dawn, Monday July 21, 2002. This effort was superceded by the OSC in favor of EPA's clean up activities, which began late Wednesday afternoon.

16. Boots & Coots efforts to extinguished the fire and cap the Well were so delayed by the OSC that on July 25, 2002 the Wartburg Volunteer Fire Department extinguished the blaze with a 1½-inch hose from their pumper truck, and Boots & Coots capped the well on July 27, 2002.

17. A producing natural gas and oil well provides severance taxes to the State of Tennessee, mineral taxes to the county, royalties to the landowners, and income and property taxes to federal and local authorities.

ALLEGATIONS REGARDING THE NEED FOR A MECHANICAL INTEGRITY TEST

18. On August 5, 2002, the United States Environmental Protection Agency ("EPA") issued a Removal Administrative Order under Section 311(c) of the CWA ("Order") requiring Pryor Oil Company Inc. ("Pryor Oil") to, *inter alia*, perform a MIT to determine whether flaws in the Well were the source of oil seeping into Clear Creek.

19. Distillation analysis of oil seeping into Clear Creek shows that the oil was exposed to heat above 300 degrees Fahrenheit, a clear indication that it was released during the fire.

20. The well casing was constructed from new pipe and was cemented with 15.6 pounds per gallon cement, circulated to the surface. (EPA Removal Administrative Order issued to Pryor Oil, August 8, 2002.)

21. On August 9, 2002, a United States Department of Interior engineer determined that the well did not present an ongoing threat to park resources. (Memo from Patrick O'Dell, Petroleum Engineer, Geologic Resources Division to Superintendent, Big South Fork National River and Recreation Area and Unit Manager, Obed Wild and Scenic River dated August 26, 2002.)

22. The National Park Service stated that a longer or shorter deadline for conducting the MIT was acceptable. (Memo from James C. Woods, National Park Service, to Superintendent, Big South Fork National River and Recreation Area, dated September 4, 2002).

23. On August 12, 2002, Pryor Oil submitted to EPA a work plan to conduct the MIT.

24. On August 22, 2002, EPA provided comments on Pryor Oil's Well Integrity Assessment Work Plan. Specifically, EPA requested that Pryor Oil add a notation of the beginning time of the MIT, i.e. the date when the pipeline would be completed and gas drawn down to a pressure that is safe to conduct the MIT.

25. In its comments to Pryor Oil's Well Integrity Assessment Work Plan EPA stated:

EPA requires the performance of the MIT to verify the location of the continuing release of oil through underground seepages into White Creek and Clear Creek.

At this time it is undetermined whether the source of the continuing oil release is the well or is oil released from the well between July 19 and 26, 2002. The MIT is intended to verify whether an extant leak within the well is allowing the

continuing release of oil. Based upon the results of that test, EPA will be able to make a determination whether further work on the well is necessary to contain additional oil releases.

Letter from Martha Brock (EPA) to Beverlee Roper (Blackwell Sander), dated August 22, 2002.

26. Pryor Oil, knowing that performing an MIT on a well under high pressure was dangerous to human health and the environment, offered to enter into non-binding arbitration to settle the matter before a technically proficient arbitrator.

27. In response to Pryor Oil's submission offering arbitration, EPA faxed to Pryor Oil Amendment #5 to the Order on October 11, 2002, Friday afternoon before a federal holiday (Columbus Day). The Amendment "ordered Pryor [Oil] to perform a Gas Deliverability Test ("GDT") on or before October 15, 2002." The cover letter to the Amendment further required that the test be conducted pursuant to Tennessee regulations and "Monograph 7: Backpressure Data on Natural Gas Wells (hereinafter "Monograph 7").

28. Upon receipt of EPA's Amendment #5, Pryor Oil immediately ran a search for the Monograph 7. Pryor Oil discovered that no copy of the 212-page Monograph published in 1935 by then-Secretary of the U.S. Department of the Interior Harold Ickes was registered to exist in the State of Tennessee. Pryor Oil located a copy of the Monograph 7 at the Linda Hall Library in Kansas City and shipped it overnight to Cookville.

29. On October 15, 2002, Eastern Reservoir Services conducted the GDT, with EPA oversight.

30. Eastern Reservoir Services issued a Well Test Report on October 25, 2002, estimating that the Well could be produced continuously at 1000 million cubic feet per day

("mcf") for nearly 4 years before the pressure on the well would rescind to the point that the MIT could be performed safely.

31. The EPA-ordered GDT, performed under EPA oversight, proved Pryor Oil's assertions that the well is under high constant pressure, making the performance of the MIT a risk to human health and the environment. EPA has never disputed Eastern Reservoir Services' findings.

32. It is undisputed, and confirmed by an NPS petroleum engineer that natural gas will escape a well under pressure before, and more easily, than any fluid. During the GDT, EPA's OSC observed that no gas bubbles were present at the well, either in the wellhead cellar or around the top of the closing, in the retention basins located just down gradient from the well. U.S. Coast Guard personnel have observed that no gas bubbles have ever been detected at any time at the point ever-shrinking volumes of residual oil seeps toward Clear Creek.

33. The volume of the oil captured by the skimming operation on Clear Creek has reduced dramatically:

- On September 19, 2002, EPA estimated the volume of oil captured by the Coast Guard at **100 gallons per day**.
- On October 8, 2002, the flow of oil had slowed to about **sixteen gallons per day**.
- By October 27, the volume of oil in containment fell to **four gallons per day**.
- After November 3, 2002, approximately **four gallons of emulsified material**, which consisted mostly of air and water, was collected per day.
- By November 13, 2002 only a very **small sheen** could be detected.¹

A. _____

¹ Only a minuscule amount of oil is needed to create a sheen.

- During the week of November 17, 2002 to November 23, 2002, Pryor Oil's consultant and the onsite Coast Guard team measured the seep in drops: **4 to 6 drops per minute**.

34. EPA's On Scene Coordinator's weekly reports confirm that the flow of the oil has reduced dramatically, to the point that the OSC's weekly reports have indicated since October 31, 2002 that "[a]pproximately 00.00 gallons were released during the reporting period."

ALLEGATIONS REGARDING THE DEADLINE FOR CONSTRUCTION AND TESTING OF THE PIPELINE

35. EPA's August 5, 2002 Order stated that: "The MIT will be done only after the gas has be [sic] discharged to a pipeline." EPA Administrative Removal Order, Attachment A, August 5, 2002.

36. EPA's Order also stated that "[w]ork cannot begin without the approval of the [On-scene Coordinator]. EPA Administrative Removal Order, p. 8, August 5, 2002.

37. Pryor Oil's August 12, 2002 MIT work plan included details regarding construction of a pipeline to connect the well to Citizen Gas.

38. On August 28, 2002, Pryor Oil requested approval of its work plan to construct the pipeline.

39. On September 3, 2002, Pryor Oil's Counsel again requested EPA to approve Pryor Oil's work plan to construct the pipeline.

40. On September 10, 2002, EPA approved Pryor Oil's work plan for the pipeline.

41. On September 12, 2002 Pryor Oil ordered materials for the pipeline and on September 15, 2002, Pryor Oil began to construct the pipeline in accordance with the work plan approved by EPA.

42. Rainy weather and the rough terrain of the area the pipeline traverses have

hindered Pryor Oil's progress in construction and testing the pipeline.

43. Pryor Oil was unable to work three days of the week of September 29, 2002 to October 5, 2002 because of rainy conditions.

44. During the week of October 6, 2002 to October 12, 2002, Pryor Oil constructed a large tent so welding could continue during rainy conditions. Pryor also hired two additional workers to assist in completing the pipeline.

45. During the week of October 13, 2002 to October 19, 2002, it rained three days at the job site, slowing the trenching operation because the trenching machine could not maintain traction on steep grades. Despite the rain, Pryor Oil hourly employees worked 63 hours during this period.

46. During the week of October 20, 2002 to October 26, 2002, rain delays occurred on three days. The trenching machine also broke down, further delay construction of the pipeline.

47. During the week of October 27, 2002 to November 2, 2002, steady rain throughout the week, only allowed Pryor Oil to trench and lay line for two days. Rocky soils also slowed the trenching operation.

48. On November 13, 2002, EPA issued Amendment #6 to its Removal Administrative Order, ordering Pryor Oil to conduct the following activities:

- “1. Complete construction and testing of pipeline, including connecting the well to low-pressure pipeline to gather gas from the Howard-White #1 well.”
- “2. Draw down pressure or flare gas to level acceptable for MIT Performance.”

“3. Complete performance of MIT.”

“4. Submit reports to EPA.”

49. EPA established unrealistic deadlines for Pryor Oil to complete these activities, including a deadline for the pipeline to be constructed and tested 18 days after the Effective Date of the Amendment or by December 1, 2002.

50. Amendment #6 states “[e]xcept in the case of an extension granted in writing by EPA, if [the construction and testing of the pipeline] is not completed by the Deadline for that activity, activities 2 through 4 will not be performed by Pryor Oil and those requirements will be deemed deleted from this Amendment #6.”

51. EPA states in its cover letter to Amendment #6, if these deadlines are missed, without express extension granted by EPA, EPA may, at its sole discretion, respond to the continued discharge or threat of discharge from the Howard-White #1 well, including, without limitation, assessing well integrity or plugging and abandoning the Howard-White #1 well.

52. During the week of November 10, 2002 to November 16, 2002, very heavy rain fell on Sunday, November 11, 2002. F-3 tornadoes struck parts of Morgan County killing seven people and leaving many hurt and homeless. Pryor Oil personnel assisted victims of the storm during those parts of the week when it was too muddy to build pipeline.

53. Portions of the area traversed by the pipeline is very rough terrain with steep slopes. During dry weather these areas present formidable challenges for the stability of the machinery necessary to construct the pipeline. Constructing the pipeline

through these areas when the soils are wet is impossible. Attempting to do so may loosen unstable overburdens and cause landslides.

54. Pryor Oil Company hourly personnel have averaged more than 60 hours per week, working seven days per week since the beginning of the pipeline project.

55. In order to complete the gathering line, Pryor Oil must construct an additional 1,000 feet of 3" pipe and complete a gorge crossing across White Creek spanning a high tensile strength cable across the gorge that will suspend the pipeline about 20 feet above the creek at its lowest point. Pryor Oil must also install 1,700 feet of 2" pipe across Citizens Gas' compressor station property. Citizen Gas requires the installation of the 1,700 feet of 2' pipe to be installed under the personal supervision of Joe Potter, who is gone on Thanksgiving vacation, and will not return to the area until Sunday, December 1, 2002.

56. Before the pipeline will be operational, two meter runs must be installed, one at the wellhead and one at the compressor station. A separator, pressure regulation equipment and safety equipment must also be installed before the pipeline will be ready to transport gas.

57. Before gas is transported in the pipeline, a 24-hour pressure test on the line must be conducted and any problems identified during the pressure test must be corrected.

58. On November 25, 2002, knowing that the December 1, 2002 deadline could not be met, Pryor Oil informally requested an extension of the deadline to construct and test the pipeline.

59. Having not heard from EPA by November 26, 2002, Pryor Oil filed a motion under Docket Number CWA-04-2003-5002, formally requesting an extension of the deadline to construction the pipeline.

60. In the evening of November 26, 2002, EPA denied Pryor Oil's request for an extension via email.

FIRST CLAIM FOR RELIEF

(Unconstitutional Taking and Violation of Substantive Due Process)

61. Plaintiff incorporates paragraphs 1-60 above by reference.

62. If Pryor Oil fails to meet EPA's December 1, 2002 deadline to construct and test the pipeline, EPA will seize control of the Well. EPA has indicated that it may perform an MIT and/or plug the Well and abandon it, all in violation of the Takings Clause and the Due Process Clause of the Fifth Amendment.

SECOND CLAIM FOR RELIEF

(EPA's Action Exceeding Authority)

63. Plaintiff incorporates paragraphs 1-62 above by reference.

64. To issue a CWA Section 311(c) order, EPA must establish that a discharge or a substantial threat of a discharge of oil is occurring or may occur to navigable waters, or on the adjoining shorelines to the navigable waters, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States. 33 U.S.C. § 1321(c)(1).

65. Section 1321(c)(2) of the CWA spells out the circumstances under which the government can remove the discharge or mitigate or prevent the threat of the discharge. Specifically, if a discharge, or a substantial threat of a discharge, of oil from an onshore facility

is of such a size or character as to be a substantial threat to the public health or welfare of the United States, then the government can act.

66. Defendant cannot meet the “substantial size or character as to be a substantial threat to the public health” prerequisite criteria.

67. EPA’s Amendment # 6 is outside the scope of its authority and constitutes an action that is arbitrary, capricious, and taken without procedure required by law.

RELIEF SOUGHT

WHEREFORE, Plaintiff request this Court to render judgment on this Complaint in Plaintiff’s favor and to grant Plaintiff the following relief:

A. Enter judgment declaring that Defendant’s seizure of the Well and its declared intent to perform an MIT and/or plug and abandon the Well violates the Takings Clause and Due Process Clause of the Fifth Amendment;

C. Enter judgment declaring that EPA’s issuance of Amendment #6 exceeds EPA’s statutory authority.

D. Issue a temporary restraining order, preliminary injunction and/or permanent injunction:

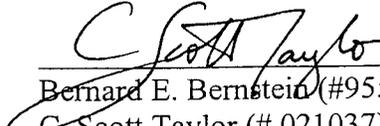
- 1) prohibiting Defendant from seizing the Well;
- 2) prohibiting Defendant from performing an MIT on the Well;
- 3) prohibiting Defendant from plugging and abandoning the Well;
- 4) prohibiting Defendant from interfering with Pryor Oil’s construction and testing of the pipeline, and subsequent production of the Well.

E. Award Plaintiff its costs and attorneys' fees in bringing this action pursuant to the Equal Access to Justice Act 28 USC § 2412; and

F. Grant Plaintiff such other relief as the Court deems necessary or appropriate for a just adjudication.

Date: November 27, 2002

Respectfully submitted,



Bernard E. Bernstein (#955)

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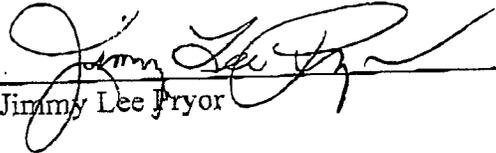
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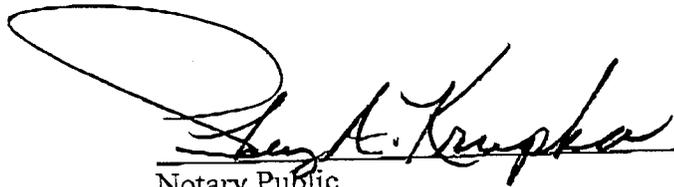
Verification

The foregoing Allegations have been made on behalf of Pryor Oil Company, Inc. by Jimmy Lee Pryor, its president and duly authorized representative, based upon his personal knowledge, his review of relevant documents, and information provided to him by others that he reasonably believes to be true and accurate.


Jimmy Lee Pryor

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

Subscribed and sworn to before me, a notary public in and for said county and state, this 27 day of November, 2002.


Notary Public

My Commission Expires:

SHERRY A. KRUPKA
Notary Public - Notary Seal
STATE OF MISSOURI
Clay County
My Commission Expires: Aug. 17, 2003