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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. _____

CIVIL ACTION

U.S. DISTRICT COURT
EASTERN DIST. TENN.

BY _____ CLERK

PLAINTIFF'S APPLICATION
FOR A TEMPORARY
RESTRAINING ORDER
AND A PRELIMINARY
INJUNCTION

**PLAINTIFF'S MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR A TEMPORARY
RESTRAINING ORDER AND A PRELIMINARY INJUNCTION**

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INTRODUCTION AND JURISDICTIONAL STATEMENT

Plaintiff submits this memorandum of law in support of its motion for a temporary restraining order and for a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure. Plaintiff seeks to enjoin defendant the United States of America, acting through the United States Environmental Protection Agency (“EPA”), from performing destructive acts upon plaintiff’s natural gas and oil well (“Howard White Unit # 1” or “the Site”) allegedly pursuant to Section 311(c) of the Clean Water Act (“CWA”), 42 U.S.C. § 1321(c), as amended by the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. § 2701, et seq. Performing a mechanical integrity test on the well, or plugging and abandoning it, will render Howard White Unit # 1 unfit to produce the natural resources of Tennessee.

As more fully described below, EPA by its Removal Administrative Order Amendment # 6 unilaterally imposed an arbitrary and capricious deadline on plaintiff to complete construction and testing of a gathering line from the Site to a compressor station. Due to circumstances beyond plaintiff’s control, the line cannot be completed within the three-week deadline imposed in Amendment # 6. On Sunday, December 1, 2002, EPA will seize control of Howard-White Unit # 1 , also pursuant to Amendment # 6.

Plaintiff requested an extension of time to complete the activities required in EPA’s unilateral order. EPA denied the extension without explanation. EPA’s actions violate Plaintiffs’ rights under the Fifth Amendment, and constitute an act beyond the scope of EPA’s authority. Absent an injunction, Plaintiff will incur irreparable injury and suffer hardships that far outweigh those, if any, resulting to EPA if the requested injunction is issued. In addition, the public interest supports an injunction.

This Court has jurisdiction over Plaintiffs' claims relating to the Site, because Plaintiff alleges that EPA's actions deprive Plaintiff of Fifth Amendment rights. Davis v. Passman, 442 U.S. 228, 236 (1979). The Administrative Procedure Act, 5 U.S.C. § 702, which allows any person suffering injury by reason of federal agency action to seek judicial review of such actions and obtain injunctive relief, also authorizes this litigation.

STATEMENT OF FACTS

1. Friday evening, July 19, 2002, Pryor Oil's drilling contractor performing 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.

2. 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.

3. The next morning the oil and gas ignited.

4. 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).

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

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

7. Saturday afternoon, July 20, 2002, Boots & Coots, having been hired and paid \$100,000 by Pryor Oil to put out the fire, arrived at the Site and began efforts to cap the well.

8. Pryor Oil arranged for a promissory note to Boots & Coots providing for cash payment of the remaining balance upon completion of the capping operation.

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

10. Pryor Oil Co., Inc. had organized a massive clean up 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.

11. Boots & Coots' efforts to extinguish 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.

12. 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.

13. On August 5, 2002, 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.

14. 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.

15. 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.)

16. 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.)

17. 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).

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

19. 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.

20. 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.

21. 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.

22. 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 ("Monograph 7").

23. 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 Cookeville, Tennessee.

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

25. Eastern Reservoir Services issued a Well Test Report on October 25, 2002, estimating that the Well could be produced continuously at 1,000,000 cubic feet per day for nearly 4 years before the pressure on the well would rescind to the point that the MIT could be performed safely.

26. 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.

27. 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.

28. 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
- 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**.

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

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

Pipeline Facts

30. 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.

31. 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.

32. Pryor Oil's August 12, 2002 MIT work plan included details regarding construction of a pipeline to connect the well to Citizen Gas. Pryor Oil Well Integrity Assessment Work Plan, Appendix C, August 12, 2002.

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

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

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

36. 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.

37. Rainy weather and the rough terrain of the area the pipeline traverses have hindered Pryor Oil's progress in construction and testing the pipeline.

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

39. 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.

40. 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.

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

42. 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.

43. 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.”

44. EPA established a deadline for Pryor Oil to complete this activity 18 days after the Effective Date of the Amendment, which was November 13, 2002. Thus, the deadline under Amendment #6 for Pryor Oil to complete the construction and testing of the pipeline is December 1, 2002.

45. 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.

46. 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.”

47. 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

48. 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 soaked is impossible. Attempting to do so may loosen unstable overburdens and cause landslides.

49. 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.

50. 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. Citizens 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.

51. 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.

52. 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.

53. 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.

54. 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.

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

ARGUMENT

I. Standard For Issuing A Temporary Restraining Order And A Preliminary Injunction

The standard for a preliminary injunction in the Sixth Circuit involves a balancing of four factors. These factors are:

- (1) the likelihood that the party seeking the preliminary injunction will succeed on the merits of the claim;
- (2) whether the party seeking the injunction will suffer irreparable harm without the grant of extraordinary relief;
- (3) the probability that granting the injunction will cause substantial harm to others;

(4) whether the public interest is advanced by the issuance of the injunction.

Washington v. Reno, 35 F.3d 1093, 1098 (6th Cir. 1994). The same factors apply when a court considers issuing a temporary restraining order. New Herald, A Div. of Gannett Satellite Information Network, Inc. v. Ruyle, 949 F. Supp. 519, 521 (N.D. Ohio 1996). A court weighing a request for a preliminary injunction or temporary restraining order should balance the four factors, rather than treating them as prerequisites. Id. at 1099. “No single factor will be determinative as to the appropriateness of equitable relief.” Six Clinics Holding Corp. II v. Cafcomp Systems, Inc., 119 F.3d 393, 401 (6th Cir. 1997), citing In re DeLorean Motor Co., 755 F.2d 1223, 1229 (6th Cir. 1985).

A moving party’s failure to establish a strong probably of success on the merits does not preclude a court from issuing a temporary restraining order or permanent injunction. So long as a party raises “questions going to the merits so serious, substantial, difficult, and doubtful as to make them a fair ground for litigation and thus for more deliberate investigation,” a preliminary injunction is appropriate. Id. at 402; In re DeLorean Motor Co., 755 F.2d at 1229. Similarly, proof of irreparable harm is “not an absolute prerequisite to obtaining a preliminary injunction.” Golden v. Kelsey-Hayes Co., 73 F.3d 648, 657 (6th Cir. 1996). Rather the court balances the four factors, so the degree of proof necessary for each factor “depends upon the strength of the [moving party’s] case on the other factors.” Id.; In re DeLorean Motor Co., 755 F.2d at 1229. As discussed in more detail below, a balancing of the four factors establishes that this Court should grant a temporary restraining order and preliminary injunction preventing EPA from issuing to Plaintiffs unilateral administrative orders under CERCLA Section 106(a).

II. The Temporary Restraining Order And Preliminary Injunction Should Issue Because Plaintiff Possesses A Probability Of Success On its Claim That EPA's Actions Are Unconstitutional And Beyond EPA's Statutory Authority

As discussed below, Plaintiff is likely to establish that EPA's threat to perform an MIT or plug and abandon Howard-White Unit # 1 in the event that Pryor Oil failed to meet an arbitrarily imposed deadline violates the Takings and Due Process Clauses of the Fifth Amendment. In addition, Pryor Oil is likely to establish that EPA's threats regarding Howard-White Unit # 1 exceed the Agency's statutory authority. While Courts have given EPA broad jurisdiction under Section 311 and the Oil Pollution Act, no court has ever given EPA jurisdiction to destroy valuable resources for four drops of oil per minute that are contained and properly disposed of.

EPA has made no response to Pryor Oil's continuous and consistent proof that the well is not a source of a continuing oil release. There is no doubt that Pryor Oil's claims raise questions on the merits that are serious, form a fair ground for litigation, and warrant more deliberate investigation. Plaintiff, therefore, satisfies the first consideration for injunctive relief. Golden, 119 F.3d at 402.

A. EPA's Threats to Perform an MIT or Plug Howard White # 1 Violate The Takings And Due Process Clauses Of The Fifth Amendment

Plaintiff has proven to EPA that Howard White # 1 is under steady and growing pressure by performing a Gas Deliverability Test on the well October 15, 2002. That same test also proved that the well will produce 1,000,000 mcf per day of natural gas for at least four years. The well will also produce oil at a rate of 200 – 400 barrels per day for an indefinite period. The economic impact of destroying such a resource on the Cumberland Plateau is unjustified.

Pryor Oil has shown EPA, the Tennessee Department of Environment and Conservation ("TDEC"), and the National Park Service ("NPS") proof that the well has integrity. EPA will not respond to Pryor Oil's submissions. EPA failed to make any findings of fact with regard to

the Gas Deliverability Test. EPA failed to make findings of fact with regard to completion of the gathering line. For EPA to now perform an action on the well that could destroy it, is unfair and has the character of an unconstitutional governmental action that is quite unusual. Such governmental action implicates the fundamental principles of fairness underlying the Takings Clause.

B. EPA's Issuance of Amendment # 6 to EPA's Administrative Order Exceeds EPA's Authority

To issue a CWA Section 311 order, EPA must establish that a discharge or a threat of a substantial 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).

While EPA may or may not have had authority to issue its original order on August 7, 2002,² by November 12, 2002 it had no authority to issue Amendment # 6. 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. By November 12, 2002, Pryor Oil with U.S. Coast Guard oversight boomed and disposed of all residual oil seeping toward Clear Creek. The amount of daily skimming had reduced from 100 gallons of oil to quarts of emulsion per day. In the last week, oil was measured by drops (4) per minute.

² The validity of EPA's original decision to "federalize" the site and to issue its August 7, 2002, Removal Order is not a subject of this Motion for a Temporary Restraining Order and a Preliminary Injunction. Those issues may become a subject of litigation in the future.

Here, EPA cannot meet the “substantial size or character as to be a substantial threat to the public health” prerequisite criteria. Even the National Park Service agreed that Howard-White # 1 does not pose a threat to park resources. As pressure on the well head has increased, the volume of the seep has reduced from 100 gallons per day to a mere four drops per minute. Common sense dictates that the forces, working in opposition to each other, prove there is no connection between the seep and the well. PA’s Amendment # 6, therefore is outside the scope of its authority and constitutes an action that is arbitrary, capricious, and taken without procedure required by law.

III. The Temporary Restraining Order And Preliminary Injunction Should Issue Because Plaintiff Will Suffer Irreparable Injury Absent Such Relief

Plaintiff satisfies the second balancing factor used to issue a temporary restraining order and preliminary injunction since absent an injunction, Plaintiff will suffer irreparable harm. Pryor Oil owns and will operate Howard-White Unit # 1. EPA’s threatened actions to seize the well, perform an MIT or plug and abandon it, will surely destroy the well and the resources of Tennessee. The State of Tennessee will lose severance taxes, Morgan County will lose mineral taxes, the landowners will lose royalties, and the local economy of that portion of the Cumberland Plateau will suffer, all per se irreparable harm due to EPA’s unjustified unilateral actions. Such irreparable harm demonstrates not only the potential injury that Pryor Oil and others face, but also evinces the degree to which the balance of hardships tilts decidedly in Plaintiffs’ favor. See Section IV below.

The United States of America and its citizens will also suffer irreparable harm in that EPA’s threatened action will deprive the country of a strategic resource. Low sulfur, high quality crude oil and clean natural gas, propane and butane, produced locally, diminish the need to import such critical commodities from hostile foreign countries.

IV. The Temporary Restraining Order And Preliminary Injunction Will Not Cause EPA Substantial Harm

The third factor in balancing the need for a temporary restraining order and preliminary injunction is harm to the non-moving party. For this factor to balance in favor of the non-moving party, the non-moving party must establish that the injunction would cause it “substantial harm” or “serious prejudice.” Golden, 73 F.3d at 657; In re Eagle-Picher Indus., 963 F.2d 855, 860-61 (6th Cir. 1992). Granting an injunction here would not harm or prejudice EPA. Plaintiff, however, would suffer irreparable harm if the injunction does not issue.

Plaintiff faces a violation of its Fifth Amendment rights if EPA takes its threatened action on Howard White Unit # 1. An MIT performed on a well under high pressure, or a permanent plugging of the well, effects a regulatory taking, in violation of the Fifth Amendment’s Takings Clause. Such massive, disproportionate, and permanent taking also violates the substantive due process guarantees of the Fifth Amendment.

In contrast, EPA will suffer no harm if this Court issues an injunction. EPA is a federal agency with no interests of its own upon which to base a claim of hardship. Moreover, any possible hardship that EPA may suffer is self-imposed. EPA has never given Pryor Oil any reason for its time deadline.

Pryor Oil submitted subsequent correspondence and reports verifying that any discharge of oil toward the creek is captured by booms and has decreased in volume from 100 gallons per day to 4 drops per minute. All oil and oily emulsion is captured before it enters the main channel of Clear Creek. Neither EPA, nor the environment that it is required to protect, will suffer if this Court issues an injunction.

By failing to consider the evidence that Plaintiff has provided, EPA waived its right to suggest it will suffer any hardship when the Court issues an injunction. Pryor Oil has shown

EPA that the well is secure and not leaking oil or natural gas.³ Pryor Oil has shown through performance of a Gas Deliverability Test ordered by EPA that the well is under high pressure and that an MIT will not be feasible for approximately four years. EPA has never responded to Pryor Oil's experts' submissions. Finally, Pryor Oil submitted weekly progress reports detailing progress on the gathering line. Weather has been an issue since EPA approved Pryor Oil's workplan for construction of the gathering line. Despite best efforts, the pipeline could not be completed by EPA's arbitrary date. Pryor Oil submitted a request for an extension of time. EPA summarily denied the motion.

V. The Temporary Restraining Order And Preliminary Injunction Should Issue Because Granting Such Relief Serves The Public Interest

Plaintiff meets the last consideration in granting injunctive relief, serving the public interest. Federal agencies compromise the public interest when they ignore the Constitution and fail to comply with statutory prerequisites. The Sixth Circuit recently stated "it is always in the public interest to prevent the violation of a party's constitutional rights." G & V Lounge, 23 F.3d at 1079. Injunctive relief here will preserve Plaintiffs' constitutional rights, require EPA to comply with constitutional requirements before issuing unilateral administrative orders, and ensure the fair and impartial administration of the nation's environmental laws.

There are no public interest considerations favoring EPA's position. Pryor Oil's request for injunctive relief is narrowly tailored to this particular Site. The Court's decision to grant a temporary restraining order and preliminary injunction would only affect EPA's authority to seize and ruin an otherwise viable natural gas and oil well that is proven not to be a continuing source of oil to Clear Creek.

³ Pryor Oil's demonstration was videotaped.

The National Park Service has indicated that Howard White Unit # 1 does not threaten park resources. The National Park Service further indicated that conducting an MIT within any particular time frame is not important.

The United States needs all of its strategic energy sources. To delay seizure and destructive actions on a natural gas and oil well that could forever preclude the efficient use of Tennessee's resources is most definitely in the public interest.

The public interest, therefore, favors Plaintiffs' request for injunctive relief.

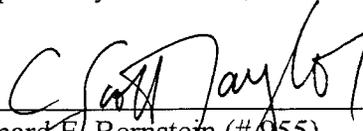
CONCLUSION

For all the foregoing reasons, this Court should 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 construction and testing of the pipeline.

Dated: November 27, 2002

Respectfully submitted,



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