

COPY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

PRYOR OIL CO., INC.,)	
)	
Plaintiff,)	
)	No. 3:02-CV-679
v.)	Judge Phillips
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ANSWER AND DEFENSES OF DEFENDANT

Defendant, United States of America, by and through Harry S. Matice, Jr., United States Attorney for the Eastern District of Tennessee, submits the following answer and defenses to the plaintiff's complaint:

ANSWER

1. To the extent Paragraph 1 of plaintiff's complaint contains solely plaintiff's characterization of its lawsuit, no response is required. Defendant otherwise denies that plaintiff may properly bring this action for the relief sought or under the authority alleged in paragraph 1.
2. Defendant denies the allegations of paragraph 2 of plaintiff's complaint.
3. Defendant admits the allegations of paragraph 3 of plaintiff's complaint.
4. Defendant admits that plaintiff is a corporation organized under the laws of the state of Missouri and that it has offices in Cookeville, Putnam County, Tennessee. Defendant is without sufficient knowledge to admit or deny the remainder of the allegations of paragraph 4 of the plaintiff's complaint and therefore denies such allegations.

5. Defendant admits that the Environmental Protection Agency ("EPA") is an agency within the Executive Branch of the United States of America, that Christine Todd Whitman is the Administrator of EPA, that EPA is organized into geographic regions, and that Jimmy Palmer is the Regional Administrator of EPA Region 4. Defendant denies the remainder of the allegations of paragraph 5 of plaintiff's complaint.

6. Defendant admits that on or about July 19, 2002, a release of oil occurred following or during the drilling of a well owned, operated by, or under the control of, plaintiff. Defendant is without sufficient knowledge to admit or deny the remainder of the allegations of paragraph 6 of plaintiff's complaint and therefore denies such allegations.

7. Defendant admits that a representative of the Tennessee Department of Environment and Conservation visited the subject well site at some time following and/or during the release of oil. Defendant is without sufficient knowledge to admit or deny the remainder of the allegations of paragraph 7 of plaintiff's complaint and therefore denies such allegations.

8. Defendant admits that at some time during release of oil from the subject well site that the oil was ignited. Defendant is without sufficient knowledge to admit or deny the remainder of the allegations of paragraph 8 of plaintiff's complaint and therefore denies such allegations.

9. Defendant admits the allegations of paragraph 2 of plaintiff's complaint.

10. Defendant is without sufficient knowledge to admit or deny the remainder of the allegations of paragraph 10 of plaintiff's complaint and therefore denies such allegations.

11. Defendant admits that at the time EPA staff arrived at the site oil booms had been placed in creeks for the purpose of capturing released oil. Defendant is without sufficient

knowledge to admit or deny the remainder of the allegations of paragraph 11 of plaintiff's complaint and therefore denies such allegations.

12. Defendant admits that a business entity known as Boots & Coots was present on the site at some time on or before July 21, 2002, for the purpose of performing services related to the well. Defendant is without sufficient knowledge to admit or deny the remainder of the allegations of paragraph 12 of plaintiff's complaint and therefore denies such allegations.

13. Defendant is without sufficient knowledge to admit or deny the allegations of paragraph 13 of plaintiff's complaint and therefore denies such allegations.

14. Defendant admits that EPA through its On Scene Coordinator ("OSC") initiated a federal response for the purposes of conducting removal actions authorized under Section 311(c) of the Clean Water Act at the subject site on July 21, 2002, because Mr. Pryor was unable to demonstrate financial capacity for response costs, and denies the remainder of the allegations of paragraph 14 of plaintiff's complaint.

15. Defendant is without sufficient knowledge to admit or deny the allegations of the first sentence of paragraph 15 of plaintiff's complaint and therefore denies such allegations. Defendant admits that EPA began cleanup activities on Monday, July 21, 2002; defendant denies the remainder of the allegations of the second sentence of paragraph 15 of plaintiff's complaint.

16. Defendant admits that Boots & Coots capped the well on July 27, 2002, and that the Wartburg Fire Department was present during the fire-fighting activities and provided equipment and services to assist in fire-fighting. Defendant is without sufficient knowledge to admit or deny the remainder of the allegations of paragraph 16 of plaintiff's complaint and therefore denies such allegations.

17. Defendant is without sufficient knowledge to admit or deny the remainder of the allegations of paragraph 17 of plaintiff's complaint and therefore denies such allegations.

18. Defendant admits that on August 5, 2002, EPA issued a Removal Administrative Order (RAO) under Section 311(c) of the Clean Water Act to plaintiff which required plaintiff to assess well integrity, which included the performance of an MIT. Defendant is without sufficient knowledge to admit or deny the remainder of the allegations of paragraph 18 of plaintiff's complaint and therefore denies such allegations.

19. Defendant is without sufficient knowledge to admit or deny the allegations of paragraph 19 of plaintiff's complaint and therefore denies such allegations.

20. Defendant is without sufficient knowledge to admit or deny the allegations of paragraph 20 of plaintiff's complaint and therefore denies such allegations.

21. Defendant admits that United States Department of Interior petroleum engineer, Pat O'Dell, traveled to the site during the week of August 5, 2002, and stated on August 13, 2002, that the well did not present an ongoing threat to park resources. Defendant further admits that EPA possesses a copy of a memo from Patrick O'Dell dated August 26, 2002, but denies that such memorandum contains the statement alleged in the first sentence of paragraph 21. Defendant is without sufficient knowledge to admit or deny the remainder of the allegations of paragraph 21 of plaintiff's complaint and therefore denies such allegations.

22. Defendant admits that EPA possesses a copy of a memo from James C. Woods of the National Park Service dated September 4, 2003, and that a representative of the National Park Service stated, inter alia, that the "production" or "pressure relief" timeframe of 45 to 50 days is not critical in terms of park protection" and that a "longer or shorter period is acceptable."

Defendant denies the remainder of the allegations of paragraph 22.

23. Defendant admits the allegations of paragraph 23 of plaintiff's complaint.

24. Defendant admits the allegations of paragraph 24 of plaintiff's complaint.

25. Defendant admits the allegations of paragraph 25 of plaintiff's complaint.

26. Defendant admits that at some point after August 22, 2002, and before October 11, 2002, plaintiff offered to enter into arbitration with EPA with respect to the ordered MIT. Defendant denies the remainder of the allegations of paragraph 26.

27. Defendant admits that on October 11, 2002, the Friday afternoon before the federal Columbus Day holiday, EPA faxed to Pryor Oil Amendment #5 to the Order which required plaintiff to initiate on October 15, 2002, a Gas Deliverability Test (GDT) in accordance with cited Tennessee regulations and U.S. Bureau of Mines Monograph 7: Backpressure Data on Natural Gas Wells. Defendant denies the remainder of the allegations of paragraph 27.

28. Defendant is without sufficient knowledge to admit or deny the allegations of paragraph 28 of plaintiff's complaint and therefore denies such allegations.

29. Defendant admits the allegations of paragraph 29 of plaintiff's complaint.

30. Defendant admits that Eastern Reservoir Services issued a Well Test Report on October 25, 2002, and that the reports states, "For this plot we used the assumption that the Howard-White well would produce at a constant rate of 1000 mcf/d for an extended period of time," and that "if the well were to be produced continuously at 1000 mcf/d, it require (sic) nearly 4 years to deplete the reservoir to the extent that the pressure would be at 50 psi."

Defendant denies the remainder of the allegations of paragraph 30.

31. Defendant admits that EPA ordered the GDT, that the GDT was performed under

EPA oversight, that the well was under pressure, and that EPA has not provided a written evaluation to Pryor Oil of the GDT. Defendant denies the remainder of the allegations contained in paragraph 31 of the Complaint.

32. Defendant denies that, during the GDT, EPA's OSC observed that no gas bubbles were present at the well or in the retention basins. Defendant is without sufficient knowledge to admit or deny the remainder of the allegations of paragraph 32 of plaintiff's complaint and therefore denies such allegations.

33. Defendant admits that the volume of oil captured by the Coast Guard on September 19, 2002, was 100 gallons per day and has reduced since that time. Defendant further admits that Pryor Oil's October 14, 2002, Weekly Report reported the capture oil ranging between 16 and 9 gallons per day during the previous week and that EPA's October 16, 2002, Pollution Report (POLREP) indicated that 18.78 gallons of oil were collected on October 11, 2002. EPA further admits that Pryor Oil's November 3, 2002, Weekly Report reported that on October 27, 2002, (1) 1 and ½ inches of water mixed with oil was collected, (2) that one inch equals 6.26 gallons, and (3) that 70% of the liquid is oil and 30% is emulsified material. Defendant further admits that Pryor Oil's November 10, 2002, Weekly Report reported the collection of approximately 4, 3 and 4 gallons of emulsified material on November 3, 4, and 5, 2002, respectively. Defendant further admits that Pryor Oil's November 18, 2002, Weekly Report reported that on November 11 through 14, 2002, a sheen was observed and that on those days the booms were entrained. Defendant further admits that Pryor Oil's November 24, 2002, Weekly Report reported that on November 19, 2002, two seep points were releasing oil at a rate of approximately one drop every 10 to 15 seconds, that each drop then expands to 3 or 4 square

feet of sheen, and that the Coast Guard has the same observation. Defendant further admits that the same Weekly Report reported two quarts of emulsified material and less than one gallon of pure product (oil) was observed on November 20, 2002, and that approximately five gallons of emulsified material was collected between November 14 and 21, 2002. Defendant is without sufficient knowledge to admit or deny the remaining allegations of paragraph 33 of plaintiff's complaint and therefore denies such allegations.

34. Defendant admits that flow of oil has reduced significantly since the initial release and that certain of the EPA OSC weekly reports since October 31, 2002, indicate that "00.00 gallons were released during the reporting period." Defendant denies the remainder of the allegations of paragraph 34.

35. Defendant admits the allegations of paragraph 35 of plaintiff's complaint.

36. Defendant admits the allegations of paragraph 36 of plaintiff's complaint.

37. Defendant admits the allegations of paragraph 37 of plaintiff's complaint.

38. Defendants admits that the allegations contained in paragraph 38 of plaintiff's complaint.

39. Defendants admits the allegations contained in paragraph 39 of plaintiff's complaint.

40. Defendant admits the allegations of paragraph 40 of plaintiff's complaint.

41. Defendant is without sufficient knowledge to admit or deny the allegations of paragraph 41 of plaintiff's complaint and therefore denies such allegations.

42. Defendant is without sufficient knowledge to admit or deny the allegations of paragraph 42 of plaintiff's complaint and therefore denies such allegations.

43. Defendant is without sufficient knowledge to admit or deny the allegations of paragraph 43 of plaintiff's complaint and therefore denies such allegations.

44. Defendant is without sufficient knowledge to admit or deny the allegations of paragraph 44 of plaintiff's complaint and therefore denies such allegations.

45. Defendant is without sufficient knowledge to admit or deny the allegations of paragraph 45 of plaintiff's complaint and therefore denies such allegations.

46. Defendant is without sufficient knowledge to admit or deny the allegations of paragraph 46 of plaintiff's complaint and therefore denies such allegations.

47. Defendant is without sufficient knowledge to admit or deny the allegations of paragraph 47 of plaintiff's complaint and therefore denies such allegations.

48. Defendant admits the allegations of paragraph 48 of plaintiff's complaint.

49. Defendant admits that EPA established deadlines for the activities described in Paragraph 48 of the Complaint, including a deadline for the pipeline to be constructed and tested 18 days after the Effective Date of the Amendment (December 1, 2002). Defendant denies the remainder of the allegations of paragraph 49 of plaintiff's complaint.

50. Defendant admits the allegations of paragraph 50 of plaintiff's complaint.

51. Defendant admits the allegations of paragraph 51 of plaintiff's complaint.

52. Defendant admits that parts of Morgan County, Tennessee suffered heavy rain and were struck by tornadoes during mid-November 2002. Defendant is without sufficient knowledge to admit or deny the remainder of the allegations of paragraph 52 of plaintiff's complaint and therefore denies such allegations.

53. Defendant admits that portions of the area traversed by the pipeline have rough

terrain with steep slopes. Defendant is without sufficient knowledge to admit or deny the remainder of the allegations of paragraph 53 of plaintiff's complaint and therefore denies such allegations.

54. Defendant is without sufficient knowledge to admit or deny the allegations of paragraph 54 of plaintiff's complaint and therefore denies such allegations.

55. Defendant admits that to complete the ordered gathering pipeline would require pipe, a gorge crossing, and installation of pipe across a third party's property. Defendant is without sufficient knowledge to admit or deny the remainder of the allegations of paragraph 55 of plaintiff's complaint and therefore denies such allegations.

56. Defendant is without sufficient knowledge to admit or deny the allegations of paragraph 56 of plaintiff's complaint and therefore denies such allegations.

57. Defendant is without sufficient knowledge to admit or deny the allegations of paragraph 57 of plaintiff's complaint and therefore denies such allegations.

58. Defendant admits that on November 25, 2002, Pryor Oil requested an extension of the deadline to construct and test the pipeline. Defendant is without sufficient knowledge to admit or deny the remainder of the allegations of paragraph 58 of plaintiff's complaint and therefore denies such allegations.

59. Defendant admits that on November 26, 2002, Pryor Oil filed a motion under Docket Number CWA-04-2003-5002, requesting an extension of the deadline to construct the pipeline. Defendant specifically denies that there is an administrative procedure for formally filing such motions. Defendant is without sufficient knowledge to admit or deny the remainder of the allegations of paragraph 59 of plaintiff's complaint and therefore denies such allegations.

60. Defendant admits the allegations of paragraph 60 of plaintiff's complaint.

61. In response to the allegations of paragraph 61 of plaintiff's complaint, defendant realleges and incorporates by reference its answers to paragraphs 1 through 60 above.

62. EPA admits that at the time it indicated that it may perform an MIT and/or plug and abandon the well if plaintiff failed to meet the December 1, 2002, deadline. Defendant denies the remainder of the allegations of paragraph 62.

63. In response to the allegations of paragraph 63 of plaintiff's complaint, defendant realleges and incorporates by reference its answers to paragraphs 1 through 62 above.

64. Defendant admits that Section 311(c) of the Clean Water Act, 33 U.S.C. § 1321(c), govern issuance of the subject Removal Administrative Order. To the extent that the allegations of paragraph 64 of plaintiff's complaint purport to characterize the Clean Water Act and the regulations promulgated thereunder, as construed by applicable case law, such allegations are legal conclusions to which no response is required.

65. Defendant admits that Section 311(c) of the Clean Water Act, 33 U.S.C. § 1321(c), govern issuance of the subject Removal Administrative Order. To the extent that the allegations of paragraph 65 of plaintiff's complaint purport to characterize the Clean Water Act and the regulations promulgated thereunder, as construed by applicable case law, such allegations are legal conclusions which to which no response is required.

66. To the extent that the allegations of paragraph 66 of plaintiff's complaint are conclusions of law, no response is required. Defendant otherwise denies the allegations of paragraph 66 of plaintiff's complaint.

67. Defendant denies the allegations of paragraph 67 of plaintiff's complaint.

68. Defendant specifically denies all the allegations of the complaint not otherwise specifically admitted or denied above.

69. Defendant denies that plaintiff is entitled to the relief sought in the remaining paragraphs of plaintiff's complaint.

AFFIRMATIVE DEFENSES

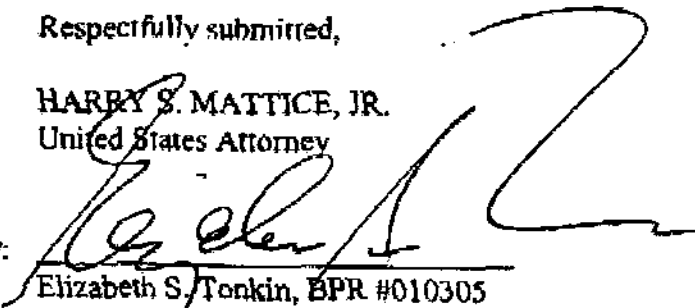
Defendant asserts the following defenses to plaintiff's complaint:

1. The Court lacks jurisdiction over the subject matter of the plaintiff's complaint.
2. Plaintiff's complaint fails to state a claim upon which relief may be granted.
3. At all times relevant to this action, the United States Environmental Protection Agency (EPA) acted within its statutory and regulatory authority.
4. At all times relevant to this action, EPA and its employees and agents did not abuse their discretion or otherwise act arbitrarily or capriciously.
5. Certain of plaintiff's claims are moot and others are not yet ripe.
6. Plaintiff has not alleged sufficient criteria for issuance of injunctive relief, preliminary or permanent.

Respectfully submitted,

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