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U.S. DISTRICT COURT
EASTERN DIST. TENN.
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

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
Judge Phillips

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO EXCLUDE RULE 26 DISCLOSURES AND DISCOVERY

Plaintiff, Pryor Oil Co., Inc. submits this Memorandum in Opposition to Defendant's Motion to Exclude from Scheduling Order Rule 26 Disclosures and Discovery.

BACKGROUND

On November 27, 2002, Pryor Oil Co., Inc. ("Pryor Oil") faced the imminent, illegal seizure of its private property, *i.e.*, the Howard-White No. 1 oil well ("the Well"), by a federal government regulatory agency. On that date Pryor Oil filed the instant action seeking immediate relief from this Article III Court to restrain the United States Environmental Protection Agency Region IV ("EPA"). EPA's secret but well-planned attack on the Well continued unabated on Monday, December 2, 2002, as government-financed contractors and equipment arrived in Morgan County, Tennessee, from Kentucky in anticipation of the unannounced seizure. Only

the news of Pryor Oil's Thanksgiving Eve filing of this lawsuit caused EPA to cease and desist. The existence of this lawsuit is the *single* factor that has restrained EPA from seizing the Well until today.

As outlined in the Complaint, by Thanksgiving EPA had established a remarkable history of trying to appropriate the Well. The Well blew out on July 19, 2002, and had been permanently capped by July 27, 2002. No uncontrolled oil has released from the Well since that date. Despite the uncontroverted fact that the Well is not a continuing source of any uncontrolled release, EPA refuses to relinquish jurisdiction over it. Pryor Oil seeks a declaratory judgment from the Court that EPA has acted and continues to act in excess of its statutory jurisdiction. In the alternative, Pryor Oil seeks a declaratory judgment that the actions of EPA were and are arbitrary and capricious with respect to the specific decisions it has made and continues to make with respect to the Well.

The narrow dispositive issue immediately before this Court is whether EPA has had the legal authority since November 27, 2002, to control the Well under the Oil Pollution Act, 33 U.S.C. § 2701-2761 and section 311(c) of the Clean Water Act, 33 U.S.C. § 1321.[1] In the alternative, Pryor Oil has plead that EPA's decisions with respect to the Well have been arbitrary and capricious. In its Motion to Exclude, the federal government asserts that the Court's power to decide the question is completely and forevermore limited to a review of EPA's administrative record which Pryor Oil only received from the government a day after the instant motion was filed. On the one hand, Pryor Oil agrees with the government that in this specific instance, on

[1] The United States Coast Guard, the trustee of the National Pollution Funds Center, is demanding that Pryor Oil reimburse the federal government for the millions of dollars that EPA wasted after it "federalized" the site and the Well. Many of EPA's response actions were unnecessary, unhelpful and caused environmental harm. Pryor Oil requests that the Court, in deciding this motion, reserve all issues as to whether the administrative record is complete with regard to any issue outside of the limited scope of the Complaint. Pryor Oil should not be barred by the restraints of issue and claim preclusion, estoppel, waiver, or laches, *inter alia*, with respect to supplementing the administrative record in any separate action the federal government may file against it in the future.

this specific administrative record, addressing the specific very narrow jurisdictional question, a review of the record should prove sufficient.[2] On the other hand, Pryor Oil respectfully disagrees with the federal government: the Court can review additional materials at its discretion as outlined below. If the Court were to decide that EPA had jurisdiction over the Well at the time the Complaint was filed, then additional evidence outside of the administrative record, some of which is discussed below, should be admitted to support Pryor Oil's alternative contention that EPA acted arbitrarily and capriciously. Pryor Oil respectfully requests that the Court reserve its right to augment the record should it become necessary in the interest of fairness and justice.

ARGUMENT

When reviewing EPA's action under the Administrative Procedures Act, 5 U.S.C. § 706, the Court's primary focus should be the materials that were before the agency when it made its final decision. The Court, however, should not view the administrative record as an absolute boundary that defines the scope of the case. *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 420 (1971). There are certain circumstances where additional materials must be considered in order to "preserve a meaningful judicial review." *North Carolina Division of Services for the Blind v. United States*, 53 Fed. Cl. 147 (2002). The following is a partial list of the exceptions to be considered in making extra-record evidence determinations:

- Whether the administrative record is complete; *Bar MK Ranches v. Yutter*, 994 F.2d 735, 739-40 (10th Cir. 1993);
- Whether there is a strong showing of improper behavior on the part of the decision maker; *Hall v. Norton*, 266 F.3d 969, 977 (9th Cir. 2001);

[2] Pryor Oil plans to file a Motion for Summary Judgment on this limited dispositive issue based solely on EPA's certified administrative record.

- Whether additional evidence is needed to determine if the agency's decision was arbitrary and capricious. *Stauber v. Shalala*, 895 F.Supp.1178, 1190 (W.D.WI 1995).

1. The Administrative Record is Incomplete.

While substantially complete for the purpose of determining the dispositive jurisdictional issue presently before the Court, the record omits certain pertinent documentation. For example, EPA omitted from the administrative record EPA-generated evidence of further attempts to assault Pryor Oil's private property. On May 28, 2003, six months *after* Pryor Oil filed its Complaint EPA's hired geologist issued a memorandum opining that a Mechanical Integrity Test ("MIT") on the Well should be performed if Pryor Oil deepens it (*see* attached at Exhibit A). In a June 20, 2003, letter to EPA's On Scene Coordinator ("OSC"), Pryor Oil corrected technical inaccuracies and faulty assumptions contained in EPA's memorandum (*see* attached at Exhibit B). Neither of these documents can be found in EPA's administrative record. Looking solely at the certified administrative record, one could rationally conclude that since this lawsuit was filed EPA has relinquished its relentless claim on the Well. Such a conclusion would be untrue.

If Pryor Oil's attempt to exhaust its administrative remedies before filing this case should become an issue, the Administrative Record is incomplete. Notwithstanding EPA's lack of jurisdiction over the Well, Pryor attempted to settle EPA's imaginary issues through EPA's administrative process. Key evidence of these attempts, along with EPA's less than responsive communications, has been omitted from the Administrative Record. Please see, without limitation, the letter dated November 26, 2002, from Pryor Oil counsel to EPA. *See*, attached at Exhibit C.

Neither EPA's continuing assertion of jurisdiction over the Well, nor Pryor Oil's attempt to exhaust its administrative remedies, is dispositive on the question of EPA's actual, legal

jurisdiction over the Well. Additional evidence outside of the administrative record could become critical, however, depending on the government's claims of justification. To the extent these side issues become pertinent, or the "arbitrary and capricious" standard becomes critical to the final outcome of this case, then the record is incomplete and should be augmented.

2. Strong Showing of Improper Behavior.

This case is replete with evidence of EPA's improper behavior. EPA has conveniently omitted it from the Administrative Record.[3] While this bad behavior is not necessarily germane to the limited jurisdictional question currently before the Court, Pryor Oil should not be barred from supplementing the administrative record should it become necessary to prove EPA's arbitrary and capricious decision-making. No court should be precluded from reviewing additional evidence in the control of the regulatory agency, but omitted from the record, if it advances the cause of fairness and justice. No court should be precluded from hearing testimony, or viewing videotape of agency personnel asserting jurisdiction over the Well.

3. Evidence of EPA's Arbitrary and Capricious Decisions.

The history of EPA's federalization and management of the site, along with its attempts to confiscate the Well, provides textbook evidence showing how to make arbitrary and capricious decisions. Much of this evidence is not included in EPA's Administrative Record.

Again, however, this case may be decided on a much narrower issue: EPA's decision to continue exercising jurisdiction over the Well. That decision is beyond arbitrary and capricious; it is without statutory authority. Simply put, Congress may grant a federal agency legal authority

[3] Some, but not all, of the evidence of EPA's bad behavior is within EPA's control. For example, omitted from the record is a letter dated August 2, 2002, from Morgan County Superintendent of Highways C. Roy Smith to EPA Region IV Administrator Jimmy Palmer. In it, Superintendent Smith enumerates the various ways that EPA wasted taxpayer money and destroyed county resources during EPA's misdirected activities following federalization of the site and Well. *See*, attached at Exhibit D. In September 2002, Pryor Oil became aware that the letter had been written and sent.

over a matter, after which the regulatory agency may make arbitrary and capricious decisions with respect to it during the agency's valid jurisdictional timeframe. Here, federal authority over the Well, *if it ever existed in the first place*, had certainly expired by November 27, 2002.

Hopefully Pryor Oil will not need to air the government's dirty laundry at this juncture. As stated above, however, depending on the case presented by the government, Pryor Oil may require that the administrative record be supplemented. Eye-witness testimony, expert witness reports and testimony, photographs, documents, demonstrations, videotape, a site visit, and other relevant material may be required to rebut EPA's predictable assertions that its actions were justified, and not arbitrary and capricious.

Conclusion

Pryor Oil prays that to the extent it becomes necessary to preserve a meaningful record, the Court will consider additional materials outside of the administrative record.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

We hereby certify that true and correct copies of the foregoing document were properly mailed or delivered to:

Elizabeth S. Tonkin, BPR #010305
Assistant U.S. Attorney
800 Market Street, Suite 211
Knoxville, TN 37902

This 4th day of August, 2003.

BERNSTEIN, STAIR & McADAMS LLP

By: _____

EXHIBIT A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

June 12, 2003

VIA FACSIMILE

Mr. Jim Pryor
Pryor Oil Company
136 E. Spring Street
Cookeville, Tennessee 38501

Re: Docket Number CWA-04-2003-5129;
Pryor Oil Co., Howard-White #1

Dear Mr. Pryor:

EPA sends this letter in response to your counsel's May 12, 2003, notification, in accordance with Amendment #11 of the above-referenced Order, that Pryor Oil intends to deepen the Howard-White #1 on or after June 11, 2003. EPA has learned from you since the time of that notification that Pryor Oil does not have a firm date for deepening the well.

EPA has, notwithstanding your lack of a date-certain for drilling, evaluated current site conditions, including the conditions at the wellhead and along the supply line near the well. As with our decision in Amendment #11, EPA does not at this time require that a Mechanical Integrity Test be performed on the well.

This letter also forwards for your consideration a May 28, 2003, memorandum prepared for EPA Region 4 by David E. Smink, P.E., regarding certain well conditions and the issue of the MIT. You will note that Mr. Smink recommends certain procedures at the well to evaluate whether future drilling operations may be impractical. Though Mr. Smink has made these recommendations, EPA is not at this time requiring those procedures, but provides them to you for your considered evaluation. EPA has previously provided these recommendations to Marsha White of the Division of Oil and Gas at Tennessee Department of Environment and Conservation.

EPA will, of course, continue to evaluate site conditions during its oversight activities. Should you have questions or need further information, please feel free to contact me at (731) 422-0101.

Sincerely,

Steve Spurlin

Steve Spurlin
On-Scene Coordinator

Attachment

cc: Via Fax: Marsha White, TDEC
Elizabeth S. Tonkin, DOJ
Reed Detring, NPS

May 28, 2003

MEMORANDUM

To: Steve Spurlin, OSC, Region 4, U.S. EPA
From: David E. Smink, P.E.

Re: Howard-White Unit No. 1, Morgan Co., Tennessee

You have asked me for my engineering recommendations regarding an MIT Test and subsequent drilling operations on the subject well in the form of a memorandum recognizing all of the well data developed to the current time:

MIT Test

An MIT Test should be conducted on the well prior to deepening operations requiring a drilling rig. This test is required to assure that the casing is not damaged or worn to an extent that would make future drilling operations impractical. The casing in the well is described by the vendor as "limited service" ERW casing. There is no indication that the casing has been hydrostatically tested. A small completion/workover rig can be moved to the site and the 7-inch surface casing, set and cemented at 901 feet, can be pressured tested. This test can be accomplished by setting a retrievable bridge plug or packer near the bottom of the casing. The casing may be filled with approximately 35-40 barrels of 2% KCl water and a surface pressure of 2000 psi can be applied to the casing with either bottled nitrogen or a pump truck and the applied pressure observed for a period of 15 minutes.

The limited service casing is rated as constructed at 2690 psi in burst with no safety factor and at 2440 psi with a safety factor of 1.1. It is felt that this casing should be pressure tested to 2000 psi prior to deepening operations in the event that another abnormally-pressured interval is encountered during those operations. If the casing will not contain the 2000 psi test, it is much better that this fact be determined now rather than during drilling operations when a pressure "kick" may be experienced.

Subsequent Drilling Operations

My recommendations/concerns regarding future drilling (deepening) operations are as follows:

The well should be deepened using drilling mud or a heavy brine as the drilling medium. The reason for this is that the Sunnybrook formation at approximately 2400 feet measured depth was found to be abnormally pressured. Boots and Coots, the oil well fighting firm hired to extinguish the earlier well fire and to bring the well under control, estimated the original

bottomhole pressure at 2400 feet at between 1600 and 1900 psig. These estimates equate to pressure gradients of 0.667 and 0.792 psi per foot, respectively. These gradients are referred to in the petroleum industry as "abnormal". Drilling with air as the drilling medium in an area known to contain abnormal pressures is considered imprudent.

The 7-inch casing set and cemented in this well has a minimum yield strength of 50,000 psi. This is slightly less than the 55,000 psi minimum yield strength of the most commonly used casing in the industry. In addition, the ERW method of construction of this casing utilizes a welded seam that can be a source of defects that are not found in seamless API casing. These factors reinforce the reasoning for the 2000 psi MIT test recommended above.

The casing probably underwent some wear during earlier drilling operations to 2400 feet. This wear is generally more severe in an air-drilled well than in a well drilled with mud or brine, as the heavier drilling fluids will provide some lubrication of the drilling operation. This factor also supports the reasoning for the 2000 psi MIT test.

The cement job on the 7-inch casing has not been evaluated. This can be accomplished by a CBL or CET log, or some similar evaluation device offered by the oilfield service firms, when the well is filled with liquid during the MIT test or when the well is "mudded up" prior to resumption of drilling operations.

The drilling rig crews that will drill this well deeper should be trained in well control. At a minimum, I suggest that the crews that will drill this well deeper be given some training in the operation of BOP's and choke assemblies. The drilling rig itself should have some basic equipment such as a mud pit level indicator and alarm.

Please let me know if you have any questions on the above.

EXHIBIT B

PRYOR OIL COMPANY, INC.

★ Exploration
★ Production
★ Consulting
★ Lease Operations

136 E. Spring St.
Cookeville, TN 38501
(931) 520-7022
(931) 528-3642 Fax

Steve Spurlin
Ed Jones Federal Building, B-13
109 South Highland Avenue
Jackson, TN 38301

June 20, 2003

Dear Steve,

Thank you for sending the Boots & Coots memorandum dated September 16, 2002 ("the Memo"). You are correct, we received a copy of it at the January 23, 2003, meeting in Knoxville. We not only respectfully disagree with the Boots & Coots estimate of 1,600 to 1,900 p.s.i. original formation pressure, we take issue with the Memo's underlying premise.

The September 16, 2002, memo assumes a continued oil seep to Clear Creek of 20 to 50 gallons per day.[1] "*Due to the continued seepage,* the wellbore integrity will be inspected." The purpose of the Memo "is to present Boots & Coots' opinion *as to the proper method for testing the mechanical integrity* of the subject well." In other words, the Memo assumes the need for an MIT because of the "continued seep".

Mr. Garner tried hard to explain the seep. According to the Memo the cause of the seep could possibly be due to a problem with well integrity. The Memo even introduces a "theoretical possibility that an induced formation fracture occurred immediately prior to the blowout . . . " In other words, the Memo opines that a 700 foot vertical fracture may have occurred from the bottom of the well casing to the creek over a 500 foot lateral underground field. Such a fracture would, according to the Memo, explain the 20 to 50-gallon per day oil discharge. While the basis of B&C's "theoretical possibility" is absurd, attached is an explanation and exhibit that explains induced fracturing.

The FACTS fail to substantiate the Memo's initial premise. By and beginning on October 31, 2002, the U.S. Coast Guard reported zero discharge to Clear Creek. The

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[1] Three days later, by letter dated September 19, 2002, EPA Regional Administrator Jimmy Palmer reported to then-United States Senator Fred Thompson that "oil continues to discharge from the well area into Clear Creek at an average rate of *approximately 100 gallons* a day . . . " Is it possible that EPA Region IV misrepresented site conditions to a U.S. Senator in response to a Congressional inquiry?

Coast Guard findings were included in the EPA OSC official reports. The zero discharge into the creek, in conjunction with the results of the EPA-ordered gas deliverability test on October 15, 2002, completely negated the basis for the Memo. No oil continued "to feed the oil seep for some period of time." With no discharge to the creek any jurisdiction over the well asserted by EPA, but not conceded by Pryor Oil Co., Inc., ceased to exist.

Despite the Memo's faulty premise, EPA's expert rendered an opinion dated May 28, 2003, based on it, *i.e.*, "[t]he original formation pressure is estimated to have been between 1,600 and 1,900 psi." This statement provides the *entire basis* of EPA's expert's opinion that an MIT be conducted on the well, yet it begs so many questions. Who made the estimate? What academic credentials, experience level, objective mechanisms were employed by the "estimator"? Under what conditions was the estimate made?

Generally accepted engineering practices would never support these formation pressure estimates on the Cumberland Plateau at a depth of 2,430' bgs. Without independent industry-accepted engineering support for the estimates, we consider the May 28, 2003 opinion as grossly flawed. Mr. Smink should refrain from making conclusions based on "someone else's" estimate when the estimate is unreasonable and indefensible in our geographic area. We request that you provide answers to the questions (above) as well as any industry accepted documentation that establishes or even suggests support for these numbers.

Based on the FACTS, please allow me to opine on another "theoretical possibility" that explains the 20 to 50 gallon per day seep in September that dwindled to zero by Halloween. When the EPA OSC federalized the well site she arbitrarily ordered everyone off of the premises. Those volunteers and Pryor Oil Co., Inc. employees who were actively engaged in containing and recapturing released oil were forced to desist and idly watch oil seep into the ground and flow downstream. Despite pleas from Pryor Oil employees to vacuum oil from containment pits, EPA's OSC allowed the discharge to continue releasing into the environment. Her actions grossly exacerbated those seepage conditions noted in the Memo. Her failure to take reasonable measures explains why the ground near the creek became saturated with oil. There was no "continuing source" other than saturated soil. This "theoretical possibility" explains both the initial volume of oil released as reflected in the Memo, and explains the reduction to zero in October.

We look forward to your response.

Very Truly Yours,

Jim Pryor

PRYOR OIL CO., INC.
136 East Spring Street
Cookeville, TN 38501

By memo dated 16 September 2002, John B. Garner of Boots and Coots asserted that the blowout of Howard-White #1 on 20 July, 2002, could have resulted in vertical fracturing of the overlying rock formations causing oil seepage to Clear Creek.[1] Vertical fracturing to surface in the manner described is impossible due to the heterogeneous nature of the rock formations in the well.

Mr. Garner failed to consider the lithology and stratigraphy of the Howard-White #1. No professional evaluation can be rendered without it. The 7" casing was cemented to surface and penetrated 600' of inter-bedded Pennsylvanian sandstone, siltstone, lignite and shale as well as 303' of Mississippian rocks consisting of limestone, siltstone and shale. The casing shoe was set at 903' in the middle of the Bangor limestone formation that consists of microcrystalline limestone and served as a good seat for our casing. Each of the many rock beds in this well has different fracture characteristics and each should have been separately considered before rendering any professional opinion.

Many unconformities occur in the well's rock sequence. An unconformity causes horizontal structural weakness of the stratigraphic column and serves as a conduit for any excess pressure. Such unconformities result in horizontal fracturing, not vertical; the unconformities direct the fracture-creating energy horizontally, not vertically.

We proved that the fluid level was well below the casing shoe during a prolonged shut-in period. Well pressure reached 550 p.s.i.g. Any vertical fracturing would have caused gas to escape at surface. Contrary to Mr. Garner's contention that such fractures would close after blowout, formation-released gravel and sand would prop open the fractures. Moreover, if fluids had communicated to surface, relief of the formation pressures would have occurred and the rotating head would not have failed. Please see *Oil Well Stimulation*, Robert S. Schechter, Figure 8.1, p. 248 (attached).

Hundreds of oil and gas wells in Eastern Tennessee have been hydraulically stimulated at depths of 800 to 1500 feet using surface pressures as high as 2000 p.s.i.g. to artificially fracture limestone, sandstone, coal, and shale formations. According to James Murphy of Blue Ridge Well Service, there has never been a single incidence of vertical fracturing to surface in all his many years of work in the area. There is no evidence of any fracture to surface at the Howard-White #1.

Respectfully Submitted,
Alan Rader, Exploration Manager, June 20, 2003

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[1] Mr. Garner also stated that surface pressure could have risen to 1,046 p.s.i.g. based on the rating of the rubber in the rotating head. Since the blowout, it has been discovered that contrary to instructions, the driller failed to install a new rubber prior to drilling. The actual failure pressures were approximately 600 to 800 p.s.i.g.

Oil Well Stimulation

ROBERT S. SCHECHTER
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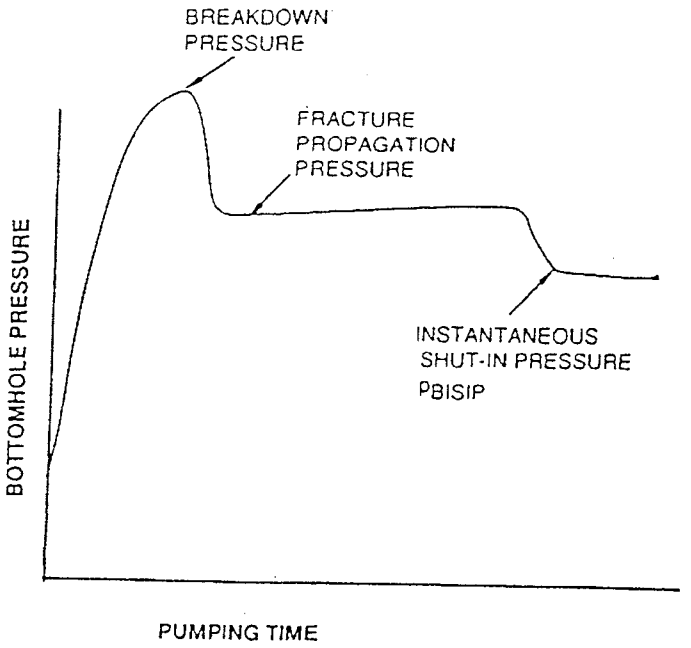

Figure 8.1 Idealized pressure behavior during fracturing.

The instantaneous shut-in pressure measured by stopping the flow will depend on the width of the fracture at this point and the pore pressure surrounding the fracture. If large quantities of fluid have been injected and the fracture width at the wellbore is large, then a larger shut-in pressure will be observed [1, 2]. If it is desired to measure the intrinsic tectonic stress, the shut-in pressure should be measured after only a small amount of low-viscosity fluid has been injected to create a fracture. At this stage the fracture width will be narrow and will have little effect. Even if larger quantities of fluid are injected, the effect of fracture width is normally less than 3000 kPa [1]. After shut-in, stresses in the earth squeeze the fluid in the fracture until the fracture walls close on the proppant or on the etched walls of an acid fracture. When the walls close, and support the earth's stresses, the pressure will decrease rapidly as more fluid leaks off into the formation.

The described pressure behavior is highly idealistic. Seldom will all the pressures described be observed during a fracture treatment. For example, if the reservoir had been previously fractured, there may not be any difference between breakdown pressure and fracture propagation pressure. If the reservoir pressure is very low, the well will go on vacuum when the fracture closes, and a static reservoir pressure will not be measured at the surface.

If p_{ISIP} is the instantaneous shut-in pressure measured at the surface, then the bottomhole shut-in pressure (p_{BISIP}) is given by

$$p_{BISIP} = p_{ISIP} + \rho g D \tag{8.1}$$

EXHIBIT C

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LLP

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November 26, 2002

VIA FACSIMILE

Ms. V. Anne Heard, Chief
Office of RCRA/Federal Facilities
UST/OPA Legal Support
U.S. Environmental Protection Agency Region IV
Sam Nunn Atlanta Federal Center
61 Forsyth Street
Atlanta, GA 30303
Fax No. (404) 562-9486

Re: Docket Number CWA-04-2003-5002
Extension of Deadline for Activity One, Amendment #6
Howard/White Unit #1
Our file no. 2707-2

Dear Ms. Heard:

I was just able to talk with Alan Rader, Pryor Oil Company official, who has been in the field. He informs me that 1,000 feet of 3-inch line must be laid, and 1,700 feet of 2-inch line must be laid to complete the gathering line. In addition, two meter runs must be installed, one at the wellhead and one at the compressor station. A separator must also be installed at the well. All equipment is onsite, but weather prevents further work at this time. It is raining and snow is predicted for this evening.

The 1,700 feet of 2-inch line that must be installed will cross Citizens Gas property. The supervisor, who has indicated that he must be present when the line is laid, has left for his Thanksgiving holiday. He has further indicated to Mr. Rader that Citizens Gas will not allow pipe be laid when the ground is so wet that construction activities will create a mess on the property.

So that everyone understands, once the line is completed and the meters are set, then a 24-hour pressure test will be required on the line. If problems are discovered, then additional time will be required to find and correct them. In no event is EPA's imposed deadline of December 1, 2002, realistic. An extension should be granted before irreparable damage is done to Howard White # 1 by U.S. government employees or its contractors.

Please let me know today by 5:00 p.m. Eastern Standard Time whether EPA has granted the requested extension. If you would like to discuss Pryor Oil's request, please feel free contact me.

Sincerely,

Beverlee J. Roper

Enclosure

cc: Ms. Martha Brock
Ms. Barbara Caprita
Mr. Jim Pryor

EXHIBIT D

Attn: Beverlee Roper From: Roy Smith

MORGAN COUNTY HIGHWAY DEPARTMENT
P.O. BOX 250
WARTBURG, TN 37887

C. ROY SMITH
SUPT. OF HWYS.

PHONE: (423)346-6661
FAX#: (423)346-7444

August 2, 2002

James I. Palmer, Jr.
Regional Administrator
EPA Region 4
61 Forsyth Street, SW
Atlanta, GA 30303-8960

Dear Sir:

I am writing to express concerns that I have, as a result of having personally seen and observed the actions of the EPA during the federalizing of a project in Morgan County, Tennessee.

On or about 7/19/02, Highland Drilling of Kingston Tennessee was drilling for oil in Morgan County when they suddenly encountered uncontrollable pressure and oil began to escape from the well head. The crew immediately started placing barriers across Clear Creek near the Barnett Bridge area and began to enlarge their containment pits to catch the oil. The "bulldozer" being used to increase the containment pits is believed to have ignited the oil causing a tremendous fire. However, the drilling crew is said to have had the oil 95% contained at around noon the next day. At this time, the EPA came on site, took over and began to call in contractors to carry out their mandates, which started with hauling large "rip rap" stone and dumping in the property owners pasture field. The number of trucks hauling stone continued to increase over the next several days, hauling day and night until the field had a very wide two lane stone road at the end of a one lane county road. The following Saturday the Morgan County Highway Department received three calls requesting some assistance because two or more of the loads of three to four inch sized stone was dumped in the county road and left unattended which was impossible for a car to travel over these piles. The highway department later had to go out and remove most of this material from the road.

The following days the circus continued with more contractors, more equipment until the following Friday I received a call from a local resident that the EPA was driving a "bulldozer" up and down the county's paved road. I again visited the site and to my disbelief, this was true. CMC a contractor out of Nicholasville Kentucky had unloaded in the middle of the road and drove 2 miles on the county road. When confronted his statement was "Don't worry I am working for the EPA and they will take care of it. This seemed unbelievable to me so I began to try and locate the person in charge, which turned out to be Mr. Fred Stroud; U.S. E.P.A. out of Atlanta Georgia. At the site three miles away Mr. Stroud did verify they would somehow work it out, that they had just paved 2 miles of road in Kentucky. During my visit to the site; I observed hundreds of vehicles, five other dozers sitting idle on site, one new fork truck hauling a ATV on the forks, two large track hoes sitting idle and numerous vehicles and equipment sitting around. One boom truck was working and I asked about the fire and they stated that it went out yesterday. However, the rock trucks are still

coming in. There was 11 of them while I was there with more waiting to come in as I left. At the end of our one lane county road is a very wide two lane stone road across the property owner's pasture into wooded area and into a second field with stone 18 inches deep and still hauling. Along the sides of the road was large deep areas of silt and "soupy mud" with no silt barriers any where. Where the road went through the trees, there were signs of unnecessary destruction with trees knocked down for no apparent reason and silt and mud everywhere with no controls in place and this is a week after the incident. I also observed the coast guard (no one knew what they were doing). They were rescue squads from 4 counties, several volunteer fire departments, the forestry department, the parks department along with "Boots and Coots" of Texas and some other contractors. This was all after the fire was out and the well was contained.

As I left the scene I ran into the property owner a very elderly man who made his living from the land all his life who summed up things with tears in his eyes; He said, "they have ruined my pasture, destroyed my fields, tore down my trees and even refused me access to my own land " ALL FOR NOTHING". The only damage done was done by them (EPA). I only gave permission for them to take a dozer down to the well site. I agree the damage was done by the EPA's miss management and circus type activities. This is the most unbelievable waste of property taxes I have ever heard of. One simply can not believe any government agency could mismanage an incident as badly as this one has been. Morgan County deputy Jamie Ward was with me during my visit to the site, and the property owner is Elmer Howard. I hope this matter could be looked into. It has been very disturbing to me and our community.

According to the Knoxville News Sentinel's article on July 28, 2002 there could be as many as 400 wells in this area and yet according to a statement by Cindy Kendrick(a board member of Tennessee Citizens for wilderness) this area the "Clear Creek Canyon" is a little known paradise with free flowing pristine water, abundant wildlife and spectacular gorges. All of this exist with some 3 to 400 wells nearby. The EPA has indicated it will try to collect the cost of the clean up (thinks it to be 500,000.00) from responsible parties. It seems strange the first time the EPA becomes involved damages sky rocket. Are they including their own damages in the estimates; How are they collecting from themselves? Why was it necessary to cause so much damage to the county road and the farmer's property?

This incident has raised many other concerns and questions, but rather than to be so lengthy I will only mention these few at this time. Our community and myself would greatly appreciate any response and again I have only mentioned things that I personally observed.

Sincerely,

C. Roy Smith
Superintendent of Highways
Morgan County, Tennessee

CRS/prl

Copies: Richard D. Green, Director Waste Management Division
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