UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

UNITED STATES OF AMERICA Plaintiff	)	
v.	)	Civil Action No.
MILLER, DYER & CO., L.L.C., CHICAGO ENERGY ASSOCIATES, and WHITING OIL AND GAS CORPORATION, Defendants	)	

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action brought against Miller, Dyer & Co., L.L.C., Chicago Energy Associates, and Whiting Oil and Gas Corporation, pursuant to Section 113(b) of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. § 7413(b), for civil penalties and permanent injunctive relief regarding violations of the CAA's program to control the emission of hazardous air pollutants as set forth in Section 112 of the CAA, 42 U.S.C. § 7412, and the regulations promulgated thereunder, and the permitting and emission fee requirements set forth in Part 71, Title V of the CAA, 40 C.F.R. §71.9(h).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345 and 1355.

3. Venue is proper in this district pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. 1391(b) and (c) because the violations at issue occurred in this judicial district and because the Defendants are located in and doing business in this judicial district.

THE FACILITIES

4. The Uinta Basin Facilities shall collectively mean the Flat Rock Compressor Station, the Seep Ridge Interconnect Station, and the Comet Pipeline Compressor Station, each of which is located in the Uinta Basin near Vernal, Utah, within the external boundaries of the Uintah and Ouray Indian Reservation, on "Indian country" lands as defined at 18 U.S.C. § 1151 in Uintah County. EPA administers the Act's programs for the National Emission Standards for Hazardous Air Pollutants ("NESHAP") and federal operating permits under Title V for these facilities located on Indian country lands.

DEFENDANTS

5. Miller, Dyer & Co., L.L.C. ("Miller Dyer"), is a Colorado limited liability company, Chicago Energy Associates ("CEA"), is a Delaware limited liability company and Whiting Oil and Gas Corporation ("Whiting"), is a Delaware corporation. The Defendants are all authorized to do business in the State of Utah.

6. Defendants are "persons" as defined in Section 302 (e) of the CAA, 42 U.S.C. § 7602(e).

DESCRIPTION OF THE FACILITIES

7. The Defendants are prior and current owners and operators of the existing compressor station referred to herein as the Flat Rock Compressor Station ("the Flat Rock Facility"), the former compressor station referred to herein as the Comet Pipeline Compressor Station ("the Comet Pipeline Facility"), and one existing hydrocarbon dewpoint control facility referred to herein as the Seep Ridge Interconnect Station ("the Seep Ridge Facility") which are located in the Uinta Basin near Vernal, Utah (the "Uinta Basin"), and located on Indian country lands in the State of Utah.

STATUTORY AND REGULATORY BACKGROUND

8. As set forth in Section 101(b)(1) of the CAA, 42 U.S.C. § 7401(b)(1), the CAA establishes a regulatory scheme designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare.

Title V Permitting Program

9. As set forth in Title V of the CAA, 42 U.S.C. §§ 7661 *et seq.*, and the regulations promulgated thereunder at 40 C.F.R. Part 71, any "Part 71 source," which includes a "major source," is required to have a comprehensive federal air quality operating permit. *See* 40 C.F.R. §§ 71.1 and 71.3(a).

10. A "major source" means "any stationary source (or group of stationary sources located within a contiguous area and under common control) that is . . . defined in section 7412 of this title [Section 112 of the CAA]. . . ." Section 501(2) of the CAA, 42 U.S.C. § 7661(2). *See also* 40 C.F.R. § 63.760(h) (an owner or operator of an affected source subject to the 40

C.F.R. Part 63, Subpart HH regulations that is a "major source" of HAPs "is also subject to 40 C.F.R. part 70 or part 71 operating permit requirements").

11. A "Part 71 Source" is required to submit an annual report of its actual emissions for the preceding year, a fee calculation worksheet, and payment of annual emission fees pursuant to 40 C.F.R. § 71.9(h)(1).

12. 40 C.F.R. Section 71 provides that:

> (b) Part 71 programs for Indian country. The Administrator will administer and enforce an operating permits program in Indian country, as defined in § 71.2, when an operating permits program which meets the requirements of part 70 of this chapter has not been explicitly granted full or interim approval by the Administrator for Indian country. For purposes of administering the part 71 program, EPA will treat areas for which EPA believes the Indian country status is in question as Indian country.

13. Pursuant to 40 C.F.R. § 71.2, "Indian country" means all land within the limits of any Indian reservation under the jurisdiction of the United States government.

14. The Federal operating permits program for stationary sources located in Indian Country became effective on March 22, 1999. *See* 64 Fed. Reg. 8247-01 (Feb. 19, 1999).

National Emission Standards For Hazardous Air Pollutants

15. Section 112 of the CAA, 42 U.S.C. § 7412, establishes a program for controlling emissions of hazardous air pollutants ("HAPs") using the maximum degree of emission reduction known as the "National Emission Standards for Hazardous Air Pollutants" or "NESHAPs." HAPs, also known as air toxics, are listed in Section 112(b) of the CAA, 42 U.S.C. § 7412(b), and include the following five that are typically contained in emissions from oil and natural gas facilities and natural gas transmission and storage facilities: benzene, toluene,

ethyl benzene, xylenes, and hexane. HAPs are pollutants which are known or suspected to cause cancer or other serious health effects such as birth defects or reproductive effects in humans.

Subpart HH Regulations

16. Pursuant to the authority under Section 112 of the CAA, 42 U.S.C. § 7412, the Administrator of EPA promulgated regulations establishing NESHAPs for Oil and Natural Gas Production Facilities. These "Maximum Achievable Control Technology ("MACT")" regulations for Oil and Natural Gas Production Facilities are codified at 40 C.F.R. Part 63, Subpart HH. The effective date of Subpart HH was June 17, 1999.

17. The Subpart HH regulations apply to specified affected sources located at oil and natural gas production facilities that (a) are "major sources" of HAPs, and (b) either process, upgrade, or store hydrocarbon liquids prior to the point of custody transfer, or natural gas prior to the point at which natural gas enters the "natural gas transmission and storage source category or is delivered to a final end user." 40 C.F.R. § 63.760(a). Natural gas is deemed to enter the "natural gas and storage source category" after leaving a natural gas processing plant if there is one, and if there is not one, after the point of custody transfer. 40 C.F.R. § 63.760(a)(3).

18. A "major source" of HAPs means "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous pollutant to 25 tons per year or more of any combination of hazardous air pollutants." Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1). *See also* 40 C.F.R. § 63.2.

19. An "affected source," for purposes of the NESHAP regulations set forth at 40 C.F.R. Part 63, means the "stationary source, the group of stationary sources, or the portion of the stationary source that is regulated by a relevant standard or other requirement established pursuant to [Section 112 of the CAA]. Each relevant standard will define the 'affected source' for the purposes of that standard . . . ." 40 C.F.R. § 63.2.

20. Affected sources under Subpart HH are defined at 40 C.F.R. § 63.760(b)(1) - (4) to include glycol dehydration units, storage vessels with the potential for flash emissions, the group of all ancillary equipment (except compressors) intended to operate in volatile hazardous air pollutant service which are located at natural gas processing plants, and compressors intended to operate in volatile hazardous air pollutant service which are located at natural gas processing plants.

21. The construction of any new, or the reconstruction of any existing, "major source" of HAPs is subject to a pre-construction approval process. Section 112(i)(1) of the CAA provides that "[a]fter the effective date of any emission standard, limitation, or regulation under subsection (d), (f), or (h) of this section, no person may construct any new major source subject to such emission standard, regulation, or limitation unless the Administrator . . . determines that such source, if properly constructed, reconstructed, and operated, will comply with the standard, regulation, or limitation." 42 U.S.C. § 7412(i)(1). *See also* 40 C.F.R. § 63.5(d)(1). 40 C.F.R. 63.5(b)(3) further provides that: "[a]fter the effective date of any relevant standard promulgated by the Administrator under this part . . . no person may construct a new major affected source . . . subject to such standard . . . without obtaining written approval, in advance, from the

administrator in accordance with the procedures specified in paragraphs (d) and (e) of this section."

22. Pursuant to 40 C.F.R. § 63.760(f)(2) the owner or operator of an affected source, the construction or reconstruction of which commenced on or after February 6, 1998, shall achieve compliance with the provisions of 40 C.F.R. Part 63, Subpart HH immediately upon initial start up or June 17, 1999, whichever is later. 40 C.F.R. § 63.760(f)(1) specifies when compliance with the provisions of 40 C.F.R. Part 63, Subpart HH must be achieved for an affected source or area source, the construction or reconstruction of which commenced before February 6, 1998.

Subpart ZZZZ

23. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated regulations, codified at 40 C.F.R. Part 63, Subpart ZZZZ, establishing NESHAPs for stationary reciprocating internal combustion engines ("RICE") at major sources of HAP emissions. 40 C.F.R. §§ 63.6584 and 63.6585. The effective date of Subpart ZZZZ was August 16, 2004.

24. Affected sources are defined at 40 C.F.R. Part § 63.6590 to include any existing, new, or reconstructed stationary RICE with a site-rating of more than 500 brake horsepower and located at a major source of HAP emissions. A "major source" of HAP emissions includes, with respect to oil and gas production facilities, a "surface site" that emits or has the potential to emit any single HAP at a rate of 10 tons or more per year, or any combination of HAPs at a rate of 25 tons or more per year. 40 C.F.R. § 63.6585(b).

25. The owner or operator of a new or reconstructed stationary RICE (defined by 40 C.F.R. § 63.6590(a)(2) & (3)) that is started up before August 16, 2004 must comply with the applicable emissions limitations and operating limitations set forth at 40 C.F.R. Part 63, Subpart ZZZZ, by no later than August 16, 2004. 40 C.F.R. § 63.6595(a)(2). For a new or reconstructed stationary RICE that is started up after August 16, 2004, the owner or operator must comply with the applicable emissions limitation and operating limitations set forth at 40 C.F.R. Part 63, Subpart ZZZZ, upon startup. 40 C.F.R. § 63.6595(a)(3).

NSPS Subpart KKK

26. EPA promulgated regulations, codified at 40 C.F.R. Part 60, Subpart KKK (§§ 60.630 - 60.636), which set forth standards of performance for affected facilities in onshore natural gas processing facilities. NSPS Subpart KKK's requirements apply to "[a]ny affected facility that commences construction, reconstruction, or modification after January 20, 1984 . . ." 40 C.F.R. § 60.630(b).

27. "Affected sources" include compressors in VOC service or in wet gas service, and all equipment within a "process unit" excluding other compressors (*i.e.*, excluding compressors not in VOC service or wet gas service). 40 C.F.R. § 60.630(a). A "process unit" means "equipment assembled for the extraction of natural gas liquids from field gas, the fractionation of the liquids into natural gas products, or other operations associated with the processing of natural gas products. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the products." 40 C.F.R. § 60.631.

FIRST CLAIM FOR RELIEF
(Flat Rock Compressor Facility – Violations of NESHAP Subparts A and HH)

28. Paragraphs 1 through 27 are realleged and incorporated by reference.

29. Prior to August 16, 2004, Defendants began construction of the Flat Rock Compressor Facility ("Flat Rock Facility"). On February 22, 2005, Defendants installed dehydration unit number one at the facility ("Dehy 1"), with the potential to emit greater than 100 tons per year of one or more hazardous air pollutants.

30. The addition of Dehy 1 on February 22, 2005, at the Flat Rock Facility constituted the construction of a new "affected source" as defined in 40 C.F.R. § 63.760(b)(1), and a "major source" of HAPs within the meaning of Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1), and 40 C.F.R. §§ 63.2 and 63.761, triggering the applicability of Subparts A and HH of EPA's 40 C.F.R. Part 63 regulations.

31. Pursuant to Section 112(i)(1) of the CAA, 42 U.S.C. § 7412(i)(1), and 40 C.F.R. §§ 63.5(b)(3) and 63.5(d), the owner or operator of the Flat Rock Facility was required to comply with a preconstruction approval process before installing Dehy 1. Such an application for approval of the construction of Dehy 1 was not submitted, and Dehy 1 was operated without EPA's approval.

32. EPA was not provided an initial notice of the applicability of the EPA's NESHAP regulations to the Flat Rock Facility within 15 days after the date of startup of Dehy 1 as required by 40 C.F.R. § 63.9(b)(5) and (d). EPA was first notified that the Flat Rock Facility was subject to the Subpart HH regulations in April 2007.

33. Pursuant to 40 C.F.R. §§ 63.6(e)(3) and 63.762(d), a Startup, Shutdown, and Malfunction ("S/S/M") plan must be prepared for an affected source by the applicable compliance date, which for sources, the construction or reconstruction of which commenced on or after February 6, 1998, is the date of the initial start-up of the affected source. A S/S/M plan was not prepared for Dehy 1 at the Flat Rock Facility before its initial start-up, on or about February 22, 2005. Nor was a S/S/M plan ever prepared, upon information and belief, for Dehy 1 before it was replaced on or about November 22, 2006.

34. In March 2007, Defendants installed an enclosed flare at the Flat Rock Facility for the control of HAP emissions. Defendants failed to install, calibrate, operate, and maintain a device equipped with a continuous recorder to measure the values of operating parameters for the flare from the Dehy 2 at the Flat Rock Facility in violation of 40 C.F.R. § 63.773(d)(3)(i)(C).

35. Defendants failed to record the times and durations of all periods during which the pilot flame, for the flare from Dehy 2 at the Flat Rock Facility, was absent in violation of 40 C.F.R. § 63.774(b)(4)(ii)(A).

36. Defendants failed to submit a timely Notification of Compliance Status Report for the Flat Rock Facility in violation of 40 C.F.R. §§ 63.9(h) and 63.775(d).

37. Defendants failed to submit a timely Periodic Report for the Flat Rock Facility in violation of 40 C.F.R. § 63.775(e).

38. Defendants are liable for civil penalties and permanent injunctive relief on account of each violation of the above NESHAP Subpart A and HH requirements pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

SECOND CLAIM FOR RELIEF
(Flat Rock Compressor Facility - Violations of Title V)

39. Paragraphs 1-38 are realleged and incorporated by reference.

40. Defendants failed to submit a timely Title V permit application for the Flat Rock Facility prior to the installation of Dehy 1 on February 22, 2005, in violation of 40 C.F.R. §71.5.

41. Defendants failed to submit an annual report of its actual emissions at the Flat Rock Facility for each calendar year, a fee calculation work sheet, and full payment of the annual fee each year, in violation of 40 C.F.R. § 71.9(h).

42. Defendants are liable for civil penalties and permanent injunctive relief on account of each Title V violation at the Flat Rock Facility, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

THIRD CLAIM FOR RELIEF
(Flat Rock Compressor Facility - Violations of NESHAP Subpart ZZZZ)

43. Paragraphs 1 through 42 are realleged and incorporated by reference.

44. Defendants operate one or more stationary reciprocating internal combustion engines ("RICE"), considered to be "new" and "affected sources" as these terms are defined at 40 C.F.R. § 63.6590(a)(1) & (2).

45. At the time Defendants' RICE were installed and started up, the Flat Rock Facility was a major source of HAPs as defined by 40 C.F.R. § 63.6585(b).

46. The Subpart ZZZZ regulations provide that an owner or operator that starts up a new stationary RICE before August 16, 2004 must comply with emission and operating

limitations in 40 C.F.R. § 63.6600(b) by no later than August 16, 2004 (the "compliance date"). 40 C.F.R. § 63.6595(a)(2).

47. Defendants' RICE at the Flat Rock Facility operated without oxidation catalyst controls in violation of 40 C.F.R. § 63.6600(b).

48. Defendants failed to prepare a S/S/M plan for the RICE operated at the Flat Rock Facility by the applicable compliance date, in violation of 40 C.F.R. § 63.6(e)(3).

49. Defendants failed to provide EPA at least 60 days advance notice of an intention to conduct a performance test or other compliance demonstration of the RICE at the Flat Rock Facility, in violation of 40 C.F.R. § 63.7(b)(1).

50. Defendants failed to conduct a timely initial performance test or compliance demonstration of the RICE at the Flat Rock Facility within 180 days after the compliance date, in violation of 40 C.F.R. § 63.6610(a).

51. Defendants are liable for civil penalties and permanent injunctive relief on account of each violation of the above NESHAP Subpart A and ZZZZ regulations pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

FOURTH CLAIM FOR RELIEF
(Seep Ridge Facility –Violations of NSPS Subpart KKK)

52. Paragraphs 1 through 51 are realleged and incorporated by reference.

53. EPA's NSPS regulations set forth at 40 C.F.R. Part 60, Subpart KKK – Standards of Performance for Equipment Leaks for VOC from Onshore Natural Gas Processing Plants, and

the general provisions set forth at 40 C.F.R. Part 60, Subpart A, apply to the natural gas liquids process at the Seep Ridge Facility.

54. Defendants failed to comply with 40 C.F.R. § 60.7(a)(3) by failing to notify EPA in writing of the actual date of the initial startup of the Seep Ridge Facility.

55. Defendants failed to conduct a performance test within 60 days after achieving the maximum production rate at the Seep Ridge Facility, but not later than 180 days after initial startup, and to furnish EPA a timely written report of such performance test(s), in violation of 40 C.F.R. § 60.8(a).

56. Defendants failed to submit written reports to EPA containing specified information for the Seep Ridge Facility on a semi-annual basis, in violation of 40 C.F.R. § 60.636(a).

57. Defendants failed to implement and keep records documenting the implementation of a leak detection and repair program at the Seep Ridge Facility to monitor leaks in affected equipment, in violation of 40 C.F.R. § 60.635.

58. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendants are liable for civil penalties for each day of each violation of the Subpart KKK leak detection and record keeping requirements at the Seep Ridge Facility.

FIFTH CLAIM FOR RELIEF
(Seep Ridge Compressor Facility - Violations of Title V)

59. Paragraphs 1-58 are realleged and incorporated by reference.

60. Defendants failed to submit a timely Title V permit application for the Seep Ridge Facility prior to the installation of generator CAT 3412 in March 2006, in violation of 40 C.F.R. §71.5.

62. Defendants failed to submit an annual report of its actual emissions at the Seep Ridge Facility for each calendar year, a fee calculation work sheet, and full payment of the annual fee each year, in violation of 40 C.F.R. § 71.9(h).

63. Defendants are liable for civil penalties and permanent injunctive relief on account of each Title V violation at the Seep Ridge Facility, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

SIXTH CLAIM FOR RELIEF
(Comet Pipeline Compressor Station - Violations of Title V)

64. Paragraphs 1-63 are realleged and incorporated by reference.

65. Defendants failed to submit a timely Title V permit application for the Comet Pipeline Compressor Station prior to commencing operations in July 2001, in violation of 40 C.F.R. §71.5.

66. Defendants failed to submit an annual report of its actual emissions at the Comet Pipeline Compressor Station for each calendar year, a fee calculation work sheet, and full payment of the annual fee each year, in violation of 40 C.F.R. § 71.9(h).

67. Defendants are liable for civil penalties and permanent injunctive relief on account of each Title V violation at the Comet Pipeline Compressor Station, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

SEVENTH CLAIM FOR RELIEF
(Comet Pipeline Compressor Station - Violations of NESHAP Subpart ZZZZ)

68. Paragraphs 1 through 67 are realleged and incorporated by reference.

69. Defendants operate one or more stationary reciprocating internal combustion engines ("RICE"), considered to be "new" and "affected sources" as these terms are defined at 40 C.F.R. § 63.6590(a)(1) and (2).

70. At the time Defendants' RICE was installed and started up, the Comet Pipeline Compressor Facility was a major source of HAPs as defined by 40 C.F.R. § 63.6585(b).

71. The Subpart ZZZZ regulations provide that an owner or operator that starts up a new stationary RICE before August 16, 2004 must comply with emission and operating limitations in 40 C.F.R. § 63.6600(b) by no later than August 16, 2004 (the "compliance date"). 40 C.F.R. § 63.6595(a)(2).

72. Defendants' RICE at the Comet Pipeline Compressor Facility operated without oxidation catalyst controls in violation of 40 C.F.R. § 63.6600(b).

73. Defendants failed to prepare a S/S/M plan for the RICE operated at the Comet Pipeline Compressor Facility by the applicable compliance date, in violation of 40 C.F.R. §63.6(e)(3).

74. Defendants failed to provide EPA at least 60 days advance notice of an intention to conduct a performance test or other compliance demonstration of the RICE at the Comet Pipeline Compressor Facility, in violation of 40 C.F.R. § 63.7(b)(1).

75. Defendants failed to conduct a timely initial performance test or compliance demonstration of the RICE at the Comet Pipeline Compressor Facility within 180 days after the compliance date, in violation of 40 C.F.R. § 63.6610(a).

76. Defendants are liable for civil penalties and permanent injunctive relief on account of each violation of the NESHAP Subpart A and ZZZZ regulations at the Comet Pipeline Compressor Facility pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully prays that this Court enter judgment against each of the Defendants:

A. For each violation of the Clean Air Act, and the regulations promulgated thereunder, a civil penalty pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, up to $27,500 per day per violation for violations occurring on or after January 30, 1997 through March 15, 2004; up to $32,500 per day for each violation that occurs after March 15, 2004, and $37,500 after January 12, 2009;

B. Permanently enjoining Defendants from continuing to violate the Clean Air Act, and the regulations promulgated thereunder; and

C. For such other relief as this Court deems just and proper.

Respectfully submitted,

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment & Natural Resources Division
950 Pennsylvania Avenue, N.W.
Room 2143
Washington, D.C. 20530

DIANNE M. SHAWLEY
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Telephone (202) 514-0096
Fax (202) 616-6583

BRETT TOLMAN
U. S. Attorney
District of Utah
185 South State Street
Suite #300
Salt Lake City, UT 84111
Phone: (801) 524-5682
Fax: (801) 524-6924