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U.S. DISTRICT COURT  
DISTRICT OF WYOMING

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING

Civil Action No. 21cv20-S

UNITED STATES OF AMERICA,

Plaintiff,

v.

FLEUR DE LIS ENERGY, LLC, and,  
FDL OPERATING , LLC,

Defendants.

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COMPLAINT

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The United States of America, by the authority of the Attorney General, and at the request of the United States Environmental Protection Agency (“EPA”), files this Complaint and alleges as follows:

**NATURE OF ACTION**

1. This is a civil action against Fleur de Lis Energy, LLC and FDL Operating, LLC (collectively “FDL” or “Defendants”), seeking civil penalties for violations of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1251-1387. The violations include the unauthorized discharge of oil into waters of the United States or adjoining shorelines and the failure to comply with regulations issued under Section 311(j), 33 U.S.C. § 1321(j), of the CWA at oil and natural gas production facilities in Wyoming.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action and Defendants under Sections 309(d) and 311(b)(7)(E) of the CWA, 33 U.S.C. §§ 1319(d) and 1321(b)(7)(E), and 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in this District pursuant to Section 311(b)(7)(E) of the CWA, 33 U.S.C. § 1321(b)(7)(E), and 28 U.S.C. §§ 1391(b) and 1395(a), because a substantial part of the events or omissions giving rise to the violations occurred in this District and because Defendants are doing business in this District.

**DEFENDANTS**

4. Defendants are limited liability companies organized under the laws of the State of Texas. At all relevant times, Defendants have conducted business in the State of Wyoming.

5. Defendants own or operate oil and natural gas production facilities in the Salt Creek and Linch Complex fields in Wyoming.

## **STATUTORY AND REGULATORY BACKGROUND**

### **CWA's Prohibition of Discharges of Oil**

6. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the unauthorized discharge of oil in “such quantities as may be harmful as determined by the President” into or upon the navigable waters or adjoining shorelines.

7. The President has delegated to EPA the authority for determining quantities of oil the discharge of which may be harmful. Executive Order No. 12777, dated October 18, 1991, Section 8(a), 56 Fed. Reg. 54757, 54768 (October 22, 1991), superseding Executive Order No. 11735, dated August 3, 1973, Section 1(1), 38 Fed. Reg. 21243 (August 7, 1973).

8. EPA has determined, for purposes of Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), that discharges of oil in such quantities that violate applicable water quality standards, or cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines may be harmful to the public health or welfare or the environment of the United States. 40 C.F.R. § 110.3.

9. For purposes of Section 311 of the CWA, 33 U.S.C. § 1321, the term “discharge” is defined to include “any spilling, leaking, pumping, pouring, emitting, emptying or dumping,” subject to certain specified exceptions not applicable here. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2).

### **Spill Prevention Control and Countermeasure Regulations**

10. Section 311(j)(1)(C) of the CWA requires the President to promulgate regulations that establish procedures for preventing and containing discharges of oil from onshore facilities into navigable waters. This authority was delegated to EPA.

11. In 1973, EPA promulgated regulations for preventing discharges of oil from non-transportation-related onshore facilities. 38 Fed. Reg. 34164 (December 11, 1973). Those regulations have been codified at 40 C.F.R. Part 112, Subparts A through C, and are referred to herein as the “Spill Prevention Control and Countermeasure Regulations” or simply “SPCC Regulations.”

12. The SPCC Regulations apply to owners and operators of non-transportation-related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil and oil products, which, due to their location or nature of operations, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines. 40 C.F.R. § 112.1.

13. As noted earlier, EPA has promulgated a regulation, set forth at 40 C.F.R. § 110.3, specifying what quantities of oil may be harmful to the public health or welfare or the environment. Such quantities include discharges that: (a) violate applicable water quality standards, (b) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or (c) cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines. 40 C.F.R. § 110.3.

14. Pursuant to 40 C.F.R. § 112.3(a), owners and operators of regulated facilities are required to prepare and implement written SPCC Plans in accordance with 40 C.F.R. Part 112.

#### **Facility Response Plan Regulations**

15. In 1990, Congress amended Section 311 of the CWA by enacting the Oil Pollution Act of 1990 (“OPA”). Section 311(j)(5)(A) directed the President to issue regulations applicable to facilities that because of their location or nature of operations “could reasonably be expected to cause substantial harm to the environment” by discharging oil into or on the



navigable waters of the United States or adjoining shorelines (so-called “substantial harm facilities”). 33 U.S.C. § 1321(j)(5)(A). Section 311(j)(5)(A) further provided that these regulations require the owners or operators of substantial harm facilities to submit “a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance.” 33 U.S.C. § 1321(j)(5)(A).

16. In 1991, the President delegated to EPA the authority to promulgate such regulations for non-transportation-related onshore facilities.

17. In 1994, EPA amended 40 C.F.R. Part 112 by promulgating Facility Response Regulations, which are published at 40 C.F.R. §§ 112.20 and 112.21. The Facility Response Regulations require owners and operators of non-transportation-related onshore oil storage and distribution facilities to determine, under the criteria established by EPA in 40 C.F.R. § 112.20(f)(1), whether their facilities could reasonably be expected to cause substantial harm to the environment by discharging oil into or on navigable waters or adjoining shorelines.

18. If a facility is determined to be a substantial harm facility under these criteria, the Facility Response Regulations require the owner or operator of the facility to prepare and submit to EPA a Facility Response Plan (“FRP”), which details the facility’s emergency plans for a worst case oil spill. 40 C.F.R. § 112.20(a).

19. The FRP must be consistent with the National Oil and Hazardous Substance Contingency Plan, 40 C.F.R. Part 300, and any applicable area contingency plans. 40 C.F.R. § 112.20(g). In addition, the FRP must either follow the format contained in 40 C.F.R. Part 112, Appendix F, or contain the elements described in 40 C.F.R. § 112.20(h)(1)-(11). The facility must also conduct response training and drill and exercise programs that either follow the

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