

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,           )  
  )  
                  Plaintiff,            )  
  )       Civil Action No. \_\_\_\_\_  
v.                                        )  
  )  
MONONGAHELA POWER COMPANY,       )  
INC. (D/B/A ALLEGHENY POWER),     )  
  )  
                  Defendant.          )  
\_\_\_\_\_  
\_\_\_\_\_

**COMPLAINT**

Plaintiff, the United States of America, by the authority 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 against Defendant Monongahela Power Company, Inc. (d/b/a Allegheny Power) ("Allegheny Power" or "Defendant"), and alleges as follows:

**NATURE OF THE ACTION**

1. This is a civil action brought against Defendant Allegheny Power, pursuant to the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 U.S.C. §§ 1251-1387, as amended by the Oil Pollution Act of 1990, Pub. L. 101-380 ("CWA"). Pursuant to Sections 1321(b)(7)(A), (C) and (E), the United States seeks the assessment of civil penalties for Defendant's violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3) and violation of Section 311(j) of the CWA, 33 U.S.C. § 1321(j) and its implementing regulations at 40 C.F.R. §

112.4(a). Further, pursuant to Sections 309(b) of the CWA, 33 U.S.C. § 1319(b), the United States seeks appropriate injunctive relief to ensure compliance with the CWA and all applicable regulations.

#### **JURISDICTION, VENUE, AND NOTICE**

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

3. Venue is proper in this judicial district, pursuant to Sections 309(b) and 311(b) (7) (E), 33 U.S.C. §§ 1319(b) and 1321(b) (7) (E), and pursuant to 28 U.S.C. § 1391(b) and (c) and 28 U.S.C. § 1395, because Defendant is located in and is doing business in this judicial district, and because the violations that are the subject of this action occurred in this judicial district.

4. Authority to bring this action is vested in the United States Department of Justice, pursuant 28 U.S.C. §§ 516 and 519, and Section 506 of the CWA, 33 U.S.C. § 1366.

5. Notification of the commencement of this action has been given to the State of West Virginia, pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

#### **THE DEFENDANT**

6. Defendant Monongahela Power Company, Inc. (d/b/a

Allegheny Power) is incorporated under the laws of the State of Ohio. At all relevant times, Defendant conducted business both within the State of West Virginia and in this judicial district, including operating its Belmont Substation, located at or near Willow Island, Pleasants County, West Virginia.

7. Defendant is a "person" within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5) and within the meaning of 40 C.F.R. § 112.2.

8. Defendant is an "owner or operator" of an "onshore facility" within the meaning of Section 311(a)(6) and (10) of the CWA, 33 U.S.C. § 1321(a)(6) and (10), and 40 C.F.R. § 112.2.

#### **STATUTORY FRAMEWORK**

9. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States and adjoining shorelines in such quantities that by regulation have been determined may be harmful to the public health or welfare or environment of the United States.

10. For purposes of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), EPA has promulgated a regulation, set forth at 40 C.F.R. § 110.3, specifying quantities of oil that may be harmful to the public health or welfare or environment of the United States. That regulation provides that such quantities of oil include discharges that either 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 the adjoining shorelines.

11. Under Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2, "oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged soil.

12. Under Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

13. Section 311(b)(7)(A) of the CWA, 33 U.S.C. § 1321(b)(7)(A), provides that:

Any person who is the owner, operator, or person in charge of any vessel, onshore facility, or offshore facility from which oil or a hazardous substance is discharged in violation of . . . [Section 311(b)(3)], shall be subject to a civil penalty in an amount up to \$25,000 per day of violation or an amount up to \$1000 per barrel of oil or unit of reportable quantity of hazardous substances discharged.

For violations occurring after January 30, 1997, a civil penalty in an amount up to \$27,500 per day of violation or an amount up to \$1,100 per barrel of oil or unit of reportable quantity of hazardous substances discharged shall apply, pursuant to the

Civil Monetary Penalty Inflation Adjustment Rule under the Debt Collection Improvement Act of 1996, Pub. L. 104-134, 61 Fed. Reg. 69630 (December 31, 1996).

14. In addition, Section 301(a) of the CWA prohibits the discharge of any pollutant by any person except in compliance with enumerated provisions of the CWA.

15. The term "discharge of a pollutant" is defined in Section 502(12) of the CWA, 33 U.S.C. § 1362(12), 33 U.S.C. § 1362(12), to include the addition of any pollutant to navigable waters from any point source.

16. Oil is a "pollutant" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

17. "Point source" is defined in Section 502(14), 33 U.S.C. § 1362(14), to include "any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit . . . container, [or] rolling rock . . . from which pollutants are or may be discharged."

18. "Navigable waters" is defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and Section 1001(21) of the OPA, 33 U.S.C. § 2701(21), to mean "the waters of the United States, including the territorial seas."

19. Under Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), EPA may issue a compliance order or bring a civil action under Section 309(b) of the CWA, 33 U.S.C. § 1319(b), for

a violation of Section 301(a). Section 309(b) authorizes EPA, in any civil action, to obtain appropriate relief, including a permanent or temporary injunction.

20. Pursuant to Section 311(s) of the CWA, 33 U.S.C. § 1321(s), any amounts received by the United States for actions under Section 311 of the CWA shall be deposited in the "Oil Spill Liability Trust Fund" established under 26 U.S.C. § 9509 to address discharges and substantial threats of discharges of oil.

21. Further, 40 C.F.R. § 112.4(a) states in relevant part:

Notwithstanding compliance with [40 C.F.R.] § 112.3 [Requirements for preparation and implementation of Spill Prevention Control and Countermeasures Plans], whenever a facility subject to § 112.3(a), (b), or (c) has: Discharged more than 1,000 U.S. gallons of oil into or upon the navigable waters of the United States or adjoining shorelines in a single spill event, or discharges oil in harmful quantities, as defined in 40 C.F.R. part 110, into or upon the navigable waters of the United States or adjoining shorelines in two spill events, reportable under section 311(b)(5) of the FWPCA, occurring within any twelve month period, the owner or operator of such facility shall submit to the Regional Administrator, within 60 days from the time of such facility becomes subject to this section, the following . . . (7) A complete copy of the SPCC Plan with any amendments;. . .

### **GENERAL ALLEGATIONS**

22. Allegheny Power owns and operates the Belmont Substation, a power generating station, located near Willow Island, West Virginia, approximately one mile up Polecat Hollow

Road to the east of West Virginia Route 2.

23. The Belmont Substation is an "onshore facility" within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10). The Belmont Substation is also a "facility" within the meaning of Section 1001(9) of the OPA, 33 U.S.C. § 2701(9). Alternatively, the transformer from which the oil was released, as described in paragraph 25 below, is a "facility" within the meaning of Section 1001(9) of the OPA, 33 U.S.C. § 2710(9).

24. At times relevant to this Complaint, a number of power transformers, breakers, and potential transformers were located at and operated at the Belmont Substation. All or most of these transformers, breakers and potential transformers contained and/or stored mineral dielectric oil.

25. At times relevant to this Complaint, the power transformer identified as General Electric (Serial Number H-409994) 500 MVA, 765 kV-500 kV, with an oil capacity of 27,670 gallons, was one of the transformers operated at the Belmont Substation.

26. Five other power transformers operated at the Belmont Substation have storage capacities for oil ranging between 14,780 and 27,670 gallons. Fifteen breakers at the facility have storage capacities for oil ranging between 2,800 and 2,966 gallons. Further, 33 potential transformers at the

facility have capacities for oil ranging between less than 25 and 45 gallons.

27. An unnamed tributary to Polecat Hollow Stream and Polecat Hollow Stream are located in close proximity to the Belmont Substation.

28. An unnamed tributary to Calf Creek and Calf Creek are located in close proximity to the Belmont Substation.

29. Cow Creek is located in close proximity to the Belmont Substation.

30. Both Polecat Hollow Stream and Calf Creek flow into Cow Creek, which flows into the Ohio River.

31. The unnamed tributary to Polecat Hollow Stream, Polecat Hollow Stream, the unnamed tributary to Calf Creek, Calf Creek, Cow Creek and the Ohio River are navigable waters and waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), Section 1001(21) of the OPA, 33 U.S.C. § 2701(21), and 40 C.F.R. § 112.2.

#### **FIRST CLAIM FOR RELIEF**

##### **(April 11, 1998 Discharge)**

32. The allegations of paragraphs 1 through 31, above, are realleged and fully incorporated herein by reference.

33. On April 11, 1998, a 27,670 gallon oil filled power transformer at the Belmont Substation failed. Approximately 19,000 gallons of oil were released from this



transformer and discharged into the environment.

34. In response to a request for information issued by EPA, pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a), Defendant identified the transformer from which the oil was released as General Electric Transformer (Serial Number H-409994) 500 MVA 765 kV-500 kV.

35. Oil discharged from the transformer flowed through parts of the Belmont Substation, away from the substation, upon the adjoining shorelines, and into one or more tributaries which flow into the Ohio, including some or all of the tributaries, creek/streams identified in paragraphs 27 through 30 above.

36. The discharge of oil from the facility caused at least an oil film and sheen upon the surfaces of Polecat Hollow Stream and Calf Creek.

37. The discharge of oil from the transformer and the Belmont Substation violated Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3). Defendant is therefore liable for civil penalties in an amount up to \$25,000 per day of violation or an amount up to \$1,000 per barrel discharged for violations occurring up to and including to January 30, 1997, pursuant to Section 311(b)(7)(A) of the CWA, 33 U.S.C. § 1321(b)(7)(A), and a civil penalty in an amount up to \$27,500 per day of violation or an amount up to \$1,100 per barrel of oil discharged for violations occurring after January 30, 1997, pursuant to the

Civil Monetary Penalty Inflation Adjustment Rule under the Debt Collection Improvement Act of 1996, Pub. L. 104-134, and 61 Fed. Reg. 69630 (December 31, 1996).

38. Alternatively, pursuant to Section 311(b)(11), Defendant's discharge of oil as alleged herein violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), thus subjecting Defendant to enforcement under Section 309(d) of the CWA, 33 U.S.C. § 1319(d) and the assessment of civil penalties as provided under Section 309(d).

#### **SECOND CLAIM FOR RELIEF**

##### **(Failure to Submit SPCC Plan)**

39. The allegations of paragraphs 1 through 38, above, are realleged and fully incorporated herein by reference.

40. Because the facility is subject to 40 C.F.R. § 112.3 and the April 11, 1998 discharge from the facility involved more than 1000 gallons of oil into or upon the navigable waters of the United States, Defendant violated 40 C.F.R. § 112.4(a) by failing to submit a complete copy of its SPCC Plan with any amendments within the required 60 days as provided in 40 C.F.R. § 122.4. Defendant is therefore liable for civil penalties, pursuant to Section 311(b)(7) of the CWA, 33 U.S.C. § 1321(b)(7), in an amount up to \$25,000 per day of violation occurring up to and including January 30, 1997, and up to \$27,500 per day of violation occurring after January 30, 1997, pursuant to the Civil Monetary Penalty Inflation Adjustment Rule under the Debt

Collection Improvement Act of 1996, Pub. L. 104-134, and 61 Fed. Reg. 69630 (December 31, 1996).

**THIRD CLAIM FOR RELIEF**

**(Injunctive Relief)**

41. The allegations of paragraphs 1 through 40, above, are realleged and fully incorporated herein by reference.

42. Defendant's unpermitted discharge of oil from a point source or sources into or upon the navigable waters of the United States or adjoining shorelines in such quantities as have been determined to be harmful to the public health or welfare or environment of the United States violated Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and subjects Defendant to injunctive relief pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b). Unless restrained by this Court, Defendant may continue to discharge oil into the navigable waters of the United States or adjoining shorelines in violation of the CWA and OPA.

43. Defendant's failure to comply with 40 C.F.R. § 112.4(a) subjects it to injunctive relief pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b). Unless restrained by this Court, Defendant will continue to violate said regulation.

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiff, United States of America,

respectfully requests from this Court the following relief:

(a) Enjoin Defendant from further discharges of oil and hazardous substances in violation of the CWA and require Defendant to take appropriate action to prevent or mitigate the effects of further spills;

(b) Require Defendant to comply immediately with 40 C.F.R. § 112.4(a) by submitting its SPCC Plan for the Belmont Substation facility and ensuring that said Plan complies with the appropriate regulation(s);

(c) Order Defendant to pay a civil penalty of up to \$25,000 (\$27,500 after January 30, 1997) per day or \$1000 (\$1,100 after January 30, 1997) for each barrel of oil or each unit of reportable quantity of hazardous substances discharged, whichever is greater;

(d) Order Defendant to pay a civil penalty of up to \$25,000 (\$27,500 after January 30, 1997) per day for violating 40 C.F.R. § 112.4(a), by failing to submit the required complete copy of its SPCC Plan with any amendments within the required 60 days; and

(e) Award such other relief to which the United States may be entitled, including the costs of this action.

Respectfully submitted,

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LOIS J. SCHIFFER  
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