IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

UNITED STATES OF AMERICA	**CRIMINAL INFORMATION**
v.	**Case No. _____**
SUMMIT MIDSTREAM PARTNERS, LLC	**Violations: 33 U.S.C. §§ 1319(c)(1)(A); 1321(b)(3); and 1321(b)(5)**

INTRODUCTION

The United States Attorney for the District of North Dakota and the Assistant Attorney General for the Environment & Natural Resources Division of the U.S. Department of Justice, charge:

At all times relevant herein:

The Defendant

1. Summit Midstream Partners, LLC ("Summit") was incorporated in Delaware and had its principal office in Texas. Defendant Summit was part of a group of interrelated corporate entities that through various subsidiaries including Summit designed, constructed, owned and operated a midstream pipeline for the purpose of transporting produced water from drilling wells to disposal wells. Company A owned and operated both the drilling wells and the disposal wells. Summit was hired by Company A to transport the produced water from the drilling well pads to the disposal wells via the

midstream pipeline that Summit and its related entities designed, constructed, owned, and operated.

Legal Framework

2. The Federal Water Pollution Control Act (the "Clean Water Act") was amended by the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 1321(b)(1). In passing OPA, Congress declared that it is the policy of the United States that there should be no discharges of oil or hazardous substances into or upon the navigable waters of the United States or the adjoining shorelines.

3. The Clean Water Act, as amended by OPA, made it a crime for a person to discharge oil negligently into or upon the navigable waters or contiguous zone of the United States in such quantities as may be harmful. 33 U.S.C. §§ 1319(c)(1) and 1321(b)(3).

4. The Clean Water Act defined "person" to include, among other things, a corporation, partnership, or association. 33 U.S.C. § 1362(5).

5. The Clean Water Act defined "discharge" as any spilling, leaking pumping, pouring, emitting, emptying, or dumping. 33 U.S.C. § 1321(a)(2). The Clean Water Act defined "oil" as oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil residue and oil mixed with other wastes. 33 U.S.C. § 1321(a)(1).

6. Federal regulations promulgated under the Clean Water Act defined a "harmful" quantity of oil as including any discharge of oil that causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited beneath the surface of the water or adjoining

shorelines. 40 C.F.R. § 110.3. A "sheen" "means an iridescent appearance on the surface of water," while "sludge" is defined as "an aggregate of oil or oil and other matter of any kind in any form other than dredged spoil having a combined specific gravity equivalent to or greater than water." 40 C.F.R. § 110.1.

7. The Clean Water Act defined the "navigable waters" of the United States as the waters of the United States, including the territorial seas. 33 U.S.C. § 1362(7).

8. North Dakota was authorized to implement the Clean Water Act. North Dakota state law required reporting certain discharges to the environment, as well as descriptions of the nature of those spills. Any spill which caused pollution to waters of the State of North Dakota must be reported immediately, and the responsible party was required to "provide all relevant information about the spill." NDAC 33-16-02.1-11(4).

9. In addition, the Clean Water Act made it a crime for any person in charge of an onshore facility from which a harmful quantity of oil or a hazardous substance is discharged into or upon navigable waters of the United States to fail to notify the appropriate federal agency as soon as the discharge is known. 33 U.S.C. § 1321(b)(3) and (b)(5); 40 C.F.R. § 110.3. The National Response Center (NRC), which is staffed by the U.S. Coast Guard, was the designated federal point of contact for reporting all oil spills in the United States. 40 C.F.R. Pt. 300, App. E at 3.1.2.

10. Fines and penalties collected under the Oil Pollution Act of 1990, including 33 U.S.C. § 1321(b)(3) and 1321(b)(5), are by law placed in the Oil Spill Liability Trust Fund established by Congress under the Act. The Oil Spill Liability Trust Fund may be used to clean up future oil spills.

Transportation and Disposal of Produced Water

11. Produced water is a collection of pollutants that are the byproduct of the hydraulic fracturing method of oil exploration and extraction commonly known as "fracking." Fracking involves injecting water, sand, and chemicals at high pressure into holes drilled in subterranean rock which causes gas and oil trapped inside the rock to be released. The term fracking refers to how the rock is fractured apart by the high-pressure mixture. Produced water is a waste product associated with fracking. The produced water caused by this method of drilling in the Bakken region of North Dakota is known to have a large concentration of saline, as well as oil, radioactive substances and other pollutants, including ammonia, aluminum, arsenic, boron, copper, nickel, selenium, zinc, barium, benzene, and thallium. Produced water is toxic to plants, fish, and other aquatic wildlife, harmful to humans, and causes damage to the environment if discharged to groundwater, surface water, or land.

12. Summit's pipeline, known as the Marmon Water Gathering System (the "Marmon System"), was located in Williams County, North Dakota, and consisted of approximately 96 miles of underground, interconnected pipeline. It ran from approximately 37 oil and gas drilling well pads ("well pads") to the disposal facility, where the produced water was held in storage tanks before being injected into two underground disposal wells.

13. On August 16, 2014, Summit's Marmon System pipeline ruptured causing a leak of oil-contaminated produced water to flow into Blacktail Creek. Blacktail Creek is a navigable water within the meaning of 33 U.S.C. § 1362(7). Approximately five miles

downstream of the leak location, Blacktail Creek flows into the Little Muddy River, which flows approximately 28 miles downstream to the Missouri River. The confluence of the Little Muddy River with the Missouri River is also known as "Lake Sakakawea."

Leak Detection

14. Monitoring pipelines is necessary to promptly detect a leak and avoid a loss of fluid. Various leak detection systems have been used in the pipeline industry to detect leaks and minimize environmental harm. One method of leak detection is to use meters to measure and compare the amount of liquid going into a pipeline with the amount of liquid exiting a pipeline. If the amount going into the pipeline is found to be greater than the amount exiting the pipeline, it may indicate that a leak has occurred. This is referred to as "line balancing."

15. Summit started transporting produced water waste from the drilling wells to the disposal wells without any equipment specifically designed to detect a leak. From in or about June and July 2014, when the Marmon System became operational, until December 24, 2014, the system did not have a line balancing leak detection system. Summit had meters that measured the amount of produced water entering the pipelines and used these meters to charge Company A for the volume of waste being transported. However, Summit did not have operational meters to measure and read the amount of produced water exiting its pipeline. Summit also lacked effective ground and aerial patrols. As a result, Summit lacked critical data that would have notified it of a potential leak.

Notice of a Leak

16. Despite the lack of line balancing, Summit had notice of multiple indicators that a possible leak existed on the Marmon System. Warning signs included a major drop in pipeline pressure as well as discrepancies between the volume of waste entering the pipeline and the amount of waste being injected into the disposal wells.

17. Summit began looking for a leak as early as October 14, 2014, when a Summit employee noted "extreme low pressure on the pipeline" and wrote in an email to other Summit employees that "I am not too sure we may not have a problem." The email stated: "The ops guys have driven the pipelines looking to see if there are leaks and I currently have people driving the lines as well looking for problems." A follow-up email the same day stated that the low pressure on the pipeline "does not seem possible" prompting a Summit manager to respond: "Not good. We may want to consider shutting down." However, Summit continued operations.

18. Company A informed Summit on multiple occasions that there were "differences" between the volume of produced water entering the Marmon System and the volume of produced water being injected into Company A's produced water disposal wells. Company A informed Summit that 115,000 barrels (4,830,000 gallons) of produced water were missing for the month of October 2014. On December 10, 2014, Company A notified Summit of a continuing discrepancy of approximately 4,900 barrels (205,800 gallons) per day. Summit continued to transport produced water through its midstream pipeline after receiving this information.

19. On December 24, 2014, Summit placed the Marmon System outlet meters into service. These meters were purchased in August, installed in September, but had not been previously connected to an electrical power source. With operational inlet and outlet meters, Summit was able as of December 24, 2015, to perform line balancing on the Marmon System for the first time although it did not do so.

20. On January 6, 2015, Company A sent an email providing Summit with the readings from Summit's inlet and outlet meters for the period December 25, 2014, to January 3, 2015, showing 67,007 barrels entering the pipeline and 9,177 barrels existing, a difference of 57,830 barrels (2,428,860 gallons) missing from the pipeline during the ten-day period.

21. At no time between August 2014 and January 6, 2015, did Summit notify any federal or state authorities that it was looking for a suspected leak, that it had a sustained loss of pressure in the Marmon System dating back to August 2014, or that it possessed data regarding discrepancies between Summit's inlet meters and Company A's disposal well meters.

Failure to Report the Discharge of a Harmful Quantity

22. Summit shut down the Marmon System pipeline on January 6, 2015, after an employee found physical evidence of a leak. Summit did not notify the federal National Response Center (NRC) of the leak until 4:38 p.m. MT on January 7, 2015. When Summit did call the NRC, it reported that the spill was an unknown quantity of "saltwater" (a term used for produced water) impacting Blacktail Creek.

23. On January 18, 2015, Summit contacted the NRC and changed the substance spilled from "saltwater" to "produced water with entrained hydrocarbons."

24. On January 21, 2015, Summit reported an estimated spill volume to the NRC after being asked to do so by a U.S. Environmental Protection Agency official. Summit reported "[p]otentially 70,000 barrels of produced water and an unknown quantity of hydrocarbons associated with the produced water." In making this report, Summit did not qualify the information or state the estimate of 70,000 barrels was based solely on the 14 days of data from December 24, 2014, to January 6, 2015, nor did it provide other relevant information it possessed indicating that the spill had been ongoing for months.

25. An analysis of available data was sent to the Summit executives on January 9, 2015. It showed that the leak began on or about August 16, 2014, and that approximately 754,219 barrels had been discharged into the environment. This information was not disclosed to the NRC, the U.S. Environmental Protection Agency, or the State of North Dakota.

COUNT ONE
Clean Water Act & Oil Pollution Act – Negligent Discharge of Oil

26. The allegations of paragraphs 1 through 25 are incorporated by reference as if fully set forth herein.

27. From on or about August 16, 2014, and continuing through and including on or about January 6, 2015, in the District of North Dakota and elsewhere, the defendant,

SUMMIT MIDSTREAM PARTNERS, LLC,

did negligently discharge and cause the discharge, and the ongoing and continuous discharge, of produced water, a hydraulic fracturing waste consisting of oil in such quantities as may be harmful, into Blacktail Creek, a navigable water of the United States from its midstream pipeline known as the Marmon Water Gathering System. Specifically, between on or about August 16, 2014, and continuing through January 6, 2015, defendant Summit, acting by and through its officers, agents, and employees, negligently discharged approximately 700,000 barrels (approximately 29.4 million gallons) of oil-contaminated produced water from the Marmon System into the environment, including U.S. waters, by acting negligently, including the following:

a. Summit negligently designed and constructed the Marmon System;

b. Summit started and continued operations of the Marmon System in or about July 2014 without an effective leak detection system;

c. Summit continued to operate the Marmon System and discharge produced water to the environment without determining the cause of a known and sustained drop in pressure that began in August 2014;

d. Summit continued to operate the Marmon System and discharge produced water to the environment in October 2014, November 2014, and December 2014, after being informed each month that thousands of barrels of produced water were missing each day; and

e. Summit continued to operate the Marmon System and discharge produced water to the environment after December 24, 2014, and without reading and analyzing the results of newly installed flow meters.

All in violation of Title 33, United States Code, Sections 1319(c)(1)(A) and 1321(b)(3).

COUNT TWO
Clean Water Act – Failure to Report Discharge of Oil

28. The allegations of paragraphs 1 through 25 are incorporated by reference as if fully set forth herein.

29. From on or about January 6, 2015, through and including, but not limited to, on or about January 21, 2015, in the District of North Dakota and elsewhere, the defendant:

SUMMIT MIDSTREAM PARTNERS, LLC,

a person in charge of an onshore facility from which oil was discharged in a quantity which may be harmful into a navigable water of the United States and adjoining shorelines, did fail to immediately notify and caused the failure to immediately notify the appropriate agency of the United States government as soon as it had knowledge of the discharge of oil-contaminated produced water. Specifically, on about the aforementioned dates, the above-named defendant, acting by and through its officers, agents, and employees, failed to notify the National Response Center of the discharge of a harmful quantity of oil from defendant's Marmon Water Gathering System into Blacktail Creek.

All in violation of Title 33, United States Code, Section 1321(b)(5).

for NICHOLAS W. CHASE
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