

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

AMERICAN ENERGY RESOURCES CORP.,
H&M PETROLEUM CORP., and
DONALD H. ALLEN,

Defendants.

COMPLAINT

Plaintiff United States Securities and Exchange Commission (“Commission” or “SEC”), for its complaint, alleges:

I. SUMMARY

1. This case involves fraud in the offer and sale of fractional interests in oil and gas wells by Donald H. Allen, a resident of Colorado Springs, Colorado, and his two wholly-owned companies, H&M Petroleum Corporation (“H&M”) and American Energy Resources Corporation (“AER”). Between March 2002 and December 2006, Allen, H&M, and AER raised approximately \$9.9 million from at least 355 investors nationwide through a series of unregistered offerings marketed to the public through cold call telephone solicitations and “seminars” advertised in local newspapers.

2. Allen, H&M, and AER made at least four types of material misrepresentations or omissions in their solicitations. First, Allen and his companies misrepresented to investors that their funds would be used only to drill and complete the oil and gas wells in which they were

purchasing an interest. However, Allen, H&M, and AER spent approximately \$4.5 million of these funds for undisclosed purposes, including overhead, salaries, and expenses for unrelated projects. Most notably, Allen used over \$2.3 million of investors' funds to pay for personal expenses, including the purchase of a custom speedboat, child and spousal support payments, and jewelry. Second, although the issuers' offering documents touted the issuers' records of successful programs, they failed to disclose that several past programs had resulted in total losses for investors and that their most successful programs had returned only a fraction of investors' principal with no profits. Third, the offering documents falsely claimed that the issuers had themselves purchased interests in each offering, and that investors could therefore rely on their careful research in selecting projects. In fact, the issuers had not invested any funds in their projects. Finally, Allen, H&M, and AER included projections of up to 300% in annualized returns without disclosing that their projections were highly speculative and that they had never previously generated any positive returns for investors.

3. During the relevant period, Allen directed and participated in cold call solicitations of investors and personally marketed offerings to the public through seminars advertised in local newspapers. Allen was not associated with a registered broker-dealer during the time of the conduct alleged herein. Based on this conduct, Allen violated the broker-dealer registration provisions of the federal securities laws, and Allen, AER, and H&M violated the securities registration provisions of the federal securities laws.

II. JURISDICTION AND VENUE

4. The SEC brings this civil enforcement action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77t(b)] and Section 21(d) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u (d)].

5. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§78u(e) and 78aa].

6. Venue lies in this Court pursuant to Section 22(a) of the Securities Act and Section 27 of the Exchange Act [15 U.S.C. §§77v(a) and 78aa], and 28 U.S.C. §1391(b)(1) & (2). Certain of the transactions, acts, practices, and courses of business constituting the violations of law alleged herein occurred within this judicial district. Moreover, Defendant Allen resides in this district, H&M is a Colorado corporation, and the principal place of business for both AER and H&M is within this district.

7. In connection with the transactions, acts, practices, and courses of business described in this Complaint, each of the Defendants, directly and indirectly, made use of the means or instrumentalities of interstate commerce, of the mails, and/or of the means and instruments of transportation or communication in interstate commerce.

III. DEFENDANTS

8. **Donald H. Allen**, age 48, is a resident of Colorado Springs, Colorado. He is the president, chief executive officer, and sole stockholder of AER and the president and sole stockholder of H&M. Allen has been the subject of administrative orders issued by Pennsylvania and Wisconsin securities regulators based on violations of the registration provisions of the states' securities laws. Allen has never held any securities licenses, nor been affiliated with any broker-dealer registered with the SEC.

9. **H&M Petroleum Corporation** was incorporated in Colorado on February 28, 2002, and its principal place of business is in Colorado Springs, Colorado. Allen controls H&M and at all relevant times was the sole owner and employee of the company. H&M was previously the subject of an administrative order issued by Wisconsin securities regulators based

on violations of registration provisions of the Wisconsin securities laws. H&M has not registered any securities or securities offerings with the Commission.

10. **American Energy Resources Corporation** was initially incorporated as “H&M Pipeline Services Corporation” in Delaware on January 20, 2005, and its principal place of business is in Colorado Springs, Colorado. Allen owns and controls AER. AER was previously the subject of administrative orders issued by Wisconsin and Pennsylvania securities regulators based on violations of registration provisions of the states’ securities laws. AER has not registered any securities or securities offerings with the Commission.

IV. FACTS

A. Background

11. Allen formed H&M in March of 2002 as a vehicle to raise capital and operate oil and gas projects in Colorado, Nebraska, and Texas. He has been H&M’s president and sole shareholder throughout its existence. Allen created AER in mid-2005 to raise money for drilling projects operated by H&M.

12. Throughout its existence, when H&M commenced a project, it contracted with other companies to perform the various tasks necessary to drill the well. If this drilling discovered oil or gas in sufficient quantities to support a producing well, then H&M contracted with service providers to complete the well and transport the oil and gas to purchasers as it was extracted. H&M initially organized the drilling and operation of wells associated with its own offerings. However, after Allen created AER, H&M began organizing the drilling and operation of wells financed by AER.

B. The Fraudulent Offerings

1. The Conduct of the Offerings

13. From April 2002 through March 2005, H&M raised approximately \$3.1 million from six offerings of fractional interests in oil and gas well projects. The projects each had between 14 and 58 investors located in various states and in Canada. From approximately June 2005 through December 2006, AER raised about \$6.8 million from five offerings of fractional interests in oil and gas well projects. Each of these projects had between 26 and 59 investors located nationwide and in Canada.

14. Allen and others at his direction marketed these offerings through cold call telephone solicitations of potential investors identified from commercial “lead lists.” After initially contacting investors, H&M and AER salespersons sent prospective investors offering materials describing the investments and the prospective returns. Allen was typically involved in closing sales of interests in both the AER and H&M programs to investors.

15. Allen also conducted what he called “educational seminars” at local hotels to market AER offerings to investors. AER advertised the seminars in local newspapers and through emails to members of a Colorado Springs investment networking group. Following a presentation by Allen, seminar attendees received AER offering materials and subscription agreements, and Allen and AER salespersons met with attendees in small groups to describe the offerings in detail. There were at least 127 attendees in total at three AER seminars from July 2006 through September 2006.

2. The Defendants Made Materially False or Misleading Statements or Omissions Concerning the Uses of Investor Proceeds

a. H&M's Uses of Investor Proceeds

16. The subscription agreements for the H&M offerings explicitly stated that the funds provided by investors would be used only for the specific project in which the investor purchased an interest. The offering documents equated the specific amount to be raised from investors in each project with the “total cost” to drill, test, and complete the wells, and did not disclose that funds might be used for overhead or other expenses not directly related to the development of the wells.

17. Allen commingled the \$3.1 million raised through H&M’s six offerings in a general operating account. He spent only approximately \$2.2 million of these funds on drilling and completing wells, using the remainder of investor funds for undisclosed purposes. From April 2002 through December 2005, Allen took approximately \$780,000 from H&M’s bank account for his personal use. Of this amount, Allen withdrew over \$358,000 in cash and checks he wrote to himself. Allen used the remainder of the funds to pay for various personal expenses, such as credit card bills, automobile purchases, mortgage payments, and payments to his wife and other family members.

18. Contrary to representations in H&M’s subscription agreements, Allen also used funds tendered by investors to pay for cost overruns in projects in which the investors did not have an interest.

b. AER's Uses of Investor Proceeds

19. Beginning in approximately June 2005, Allen began using AER to raise money for projects operated by H&M. The subscription agreements for AER’s offerings contain

statements identical to those in the H&M subscription agreements, explicitly stating that the funds provided by investors will be used only for the specific project in which the investor purchased an interest. The AER offering documents also equate the specific amount to be raised from investors in each project with the “total cost” to drill, test, and complete the wells.

20. As he did with respect to H&M, Allen commingled the money raised from AER’s various offerings in a general operating account. Of the \$6.8 million raised through AER’s five offerings between June 2005 and December 2006, Allen spent only \$3.15 million on drilling and completing wells. He used the remaining amount for undisclosed purposes, including office rent, salaries, and commissions. AER’s bank records show that Allen also took over \$1.3 million of these investor funds. Of this amount, Allen withdrew over \$452,000 in cash and checks he wrote to himself. Additionally, Allen spent over \$866,000 of investor funds on personal expenses, including over \$345,000 for a custom speedboat, alimony and child support payments to his ex-wife, payments for a Corvette, and jewelry purchases.

21. Additionally, Allen transferred about \$460,000 from the AER investor account to an H&M account created in November 2005, after H&M took on the role of operator for the AER projects. Allen took approximately \$215,000 from that H&M account. This amount included over \$62,000 in cash and checks Allen wrote to himself. Allen spent the remainder -- over \$152,000 -- on personal expenses, including ski vacations, fitness equipment, and designer clothes.

22. In total, including the amounts raised by both H&M and AER, Allen diverted at least \$4.5 million of investor proceeds for undisclosed purposes. He personally took approximately \$2.3 million, or 23% of the \$9.9 million raised. He took most of this amount – over \$1.5 million – in the eighteen-month period from June 2005 through November 2006.

3. The Defendants Made Materially False or Misleading Statements or Omissions Concerning Past Performance

23. H&M's and AER's offering materials also made misleading statements about the past successes of these companies. Three of H&M's six projects yielded nothing but dry holes and total losses for investors. As of January 31, 2007, H&M's other three projects, which commenced in 2002 and early 2003, had returned only 1%, 9%, and 34%, respectively, of investors' principal. Still, H&M's offering materials did not disclose any information about the poor results of its prior projects. Instead, the offering materials for H&M's final offering, which followed five unprofitable projects, referenced the company's "impressive record" of "several...highly successful programs."

24. The offering documents for AER's five programs, for which H&M was the operator, also touted H&M's purported "impressive record" of "several...highly successful programs" and failed to disclose that H&M had never offered or operated a program that generated any profits for investors. As of January 31, 2007, AER's best performing project had returned only 21% of investors' principal. AER's offering documents did not disclose any information about its record, or lack thereof, in generating profits for investors.

4. The Defendants Made Materially False or Misleading Statements or Omissions Concerning the Issuers' Investments in Projects

25. H&M and AER also misrepresented their own investments in the oil and gas well projects they sold. For example, the offering materials for H&M's last offering in 2004 and early 2005 state, "[S]ince the company itself purchases shares in every offering, investors are afforded the additional assurance that all geological data as well as other pertinent information has been meticulously analyzed before a program is offered to the public." AER's offering documents for its

five offerings contain similar language, stating that investors can be assured that AER has meticulously analyzed data relevant to the offering because AER invests its own money in each offering. However, although H&M or AER retained a 20% interest in each well they financed, neither H&M nor AER ever purchased these interests. The drilling, testing, and completion of the wells were financed solely with investor funds. Because he collected substantially more investor money than he spent drilling and completing the wells, Allen profited regardless of whether the AER and H&M projects were successful.

5. The Defendants Made Materially False or Misleading Statements or Omissions Concerning Projected Returns

26. Finally, Allen, H&M and AER touted misleading projections about the potential returns from their oil and gas well projects. In the H&M offering documents, Allen touted projected annual returns ranging from 89% to 354%. AER's offering documents projected annual returns ranging up to 254%. The projections contained in his companies' offering materials were purportedly typically based on historic production from oil and gas wells of varying distances from the projects in which the companies were selling interests. However, there was no such historical information available for several of the projects. Although the offering documents couched the anticipated returns as projections rather than guarantees, Allen, H&M, and AER failed to disclose that their projections for positive income were highly speculative and were purportedly based on their understanding of the historical results of other wells. Moreover, Allen knew that the numerous prior projects financed by H&M and AER over the course of several years had consistently failed to produce any returns, much less the lofty prospective income set forth in the offering materials' projections. Without disclosing the lack of returns generated for investors in previous projects and the highly speculative nature of the

projections, the projections of positive income contained in the offering materials were misleading.

C. The Defendants Sold Securities in Unregistered Transactions

27. Section 2(a)(1) of the Securities Act defines a “security” to include “fractional undivided interests in oil, gas, or other mineral rights.” Section 3(a)(10) of the Exchange Act defines a “security” to include any “certificate of interest or participation in any . . . oil, gas, or other mineral royalty or lease[.]” H&M and AER divided rights in oil and gas projects into fractional interests that they offered and sold to investors. These fractional interests met the definitions of a security set forth in both the Securities Act and the Exchange Act.

28. Section 5(a) of the Securities Act prohibits sales of securities or the delivery of securities after sale through jurisdictional means unless a registration statement is in effect as to such security. Section 5(c) prohibits offers to sell securities unless a registration statement has been filed as to such security. No registration statement was in effect and no registration statement was filed with the SEC for the offers and sales of H&M or AER securities and they were not exempt from registration.

D. Allen Acted as an Unregistered Broker

29. Section 3(a)(4) of the Exchange Act defines “broker” generally as any person “engaged in the business of effecting transactions in securities for the account of others.” Section 3(a)(5) of the Exchange Act defines a “dealer” as any person engaged in the business of buying and selling securities for the person’s own account through a broker or otherwise. Section 15(a)(1) of the Exchange Act makes it illegal for a “broker” to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security unless such broker is

registered with the Commission or, in the case of a natural person, is associated with a registered broker-dealer.

30. Allen sold securities to investors in the form of fractional interests in oil and gas rights. Allen solicited investors, instructed others to solicit investors, negotiated the terms of sales to investors, received and handled investor funds, and was compensated for his activities through his personal use of the investor funds. Allen was not affiliated with a broker-dealer registered with the SEC during the time in which he sold the securities to investors. Through his activities, Allen acted as an unregistered broker.

FIRST CLAIM FOR RELIEF
Fraud – Violations of Exchange Act Section 10(b) and Rule 10b-5
[15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]

31. The SEC repeats and realleges paragraphs 1 through 30 above.

32. Defendants Allen, AER, and H&M, directly or indirectly, with scienter, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, the mails, or any facility of a national securities exchange, employed devices, schemes, or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person; in violation of Section 10(b) of the Exchange Act and Rule 10b-5.

33. Defendants Allen, AER, and H&M violated, and unless restrained and enjoined will in the future violate Section 10(b) of the Exchange Act and Rule 10b-5.

SECOND CLAIM FOR RELIEF
Fraud – Violations of Securities Act Section 17(a)(1)
[15 U.S.C. § 77q(a)(1)]

34. The SEC repeats and realleges paragraphs 1 through 30 above.

35. Defendants Allen, AER, and H&M, directly or indirectly, with scienter, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, employed a device, scheme, or artifice to defraud.

36. Defendants Allen, AER, and H&M violated, and unless restrained and enjoined will in the future violate Section 17(a)(1) of the Securities Act.

THIRD CLAIM FOR RELIEF
Fraud – Violations of Securities Act Sections 17(a)(2) and 17(a)(3)
[15 U.S.C. § 77q(a)(2) and (3)]

37. The SEC repeats and realleges paragraphs 1 through 30 above.

38. Defendants Allen, AER, and H&M, directly or indirectly, in the offer or sale of securities, by use of means or instruments of transportation or communication in interstate commerce, or by use of the mails, obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in transactions, practices, or courses of business which have been or are operating as a fraud or deceit upon the purchasers of AER and H&M securities.

39. Defendants Allen, AER, and H&M violated, and unless restrained and enjoined will in the future violate Sections 17(a)(2) and (a)(3) of the Securities Act.

FOURTH CLAIM FOR RELIEF
Offers and Sales of Unregistered Securities- Violations of Securities Act Sections 5(a) and 5(c)
[15 U.S.C. §§ 77e(a) and 77e(c)]

40. The SEC repeats and realleges paragraphs 1 through 30 above.

41. Defendants Allen, AER, and H&M, directly or indirectly, have made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities, when no registration statement was in effect with the Commission as to such

securities, and have made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell such securities when no registration statement had been filed with the Commission as to such securities.

42. There were no applicable exemptions from registration, and Defendants Allen, AER, and H&M therefore violated, and unless restrained and enjoined will in the future violate Sections 5(a) and 5(c) of the Securities Act.

FIFTH CLAIM FOR RELIEF
Offers and Sales of Securities by an Unregistered Broker-Dealer - Violations of Exchange
Act Section 15(a)
[15 U.S.C. § 78o(a)]

43. The SEC repeats and realleges paragraphs 1 through 30 above.

44. Defendant Allen, while engaged in the business of effecting transactions in securities for the account of others or for his own account, made use of the mails or the means or instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, a security without being registered in according with Section 15(a) of the Exchange Act.

45. Defendant Allen violated, and unless restrained and enjoined will in the future violate Section 15(a) of the Exchange Act.

PRAYER FOR RELIEF

The SEC respectfully requests that this Court:

I.

Enter an Order finding that Defendants Allen, AER, and H&M committed the violations alleged in this Complaint, and unless restrained will continue to do so.

II.

Enter an Injunction, pursuant to Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendants Allen, AER, and H&M from further violations of the law and rules alleged in this complaint.

III.

Order Defendants Allen, AER, and H&M to disgorge all ill-gotten gains in the form of any benefits of any kind derived from the illegal conduct alleged in this Complaint.

IV.

Order such other relief as this Court deems necessary and appropriate.

DATED: August 28, 2008.

Respectfully submitted,

s/Nancy J. Gegenheimer
Nancy J. Gegenheimer
Julie K. Lutz
Zachary T. Carlyle
Attorneys for Plaintiff
Securities and Exchange Commission
1801 California Street, Suite 1500
Denver, CO 80202
(303) 844-1000