

ABADIE | SCHILL

a professional corporation

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2011 OCT 28 AM 11:39

ALSO LICENSED IN

*CA, NM, UT

*ND, NE, OK

*NM, CA, LA, D.C.

*OK, GA, CO Pending

FILED
EPA REGION VIII
HEARING CLERK

Sent Via FedEx Overnight

October 27, 2011

Regional Hearing Clerk
U.S. Environmental Protection Agency Region 8
1595 Wynkoop Street (8RC)
Denver, CO 80202

RE: Answer in the Matter of Maralex Disposal, LLC
Docket No. SDWA-08-2011-0079

Dear Regional Hearing Clerk:

Enclosed please find an original and one copy of Maralex Disposal, LLCs Answer to the Proposed Penalty Complaint and Notice of Opportunity for Hearing. Additionally, I have enclosed an extra first page of the Answer. Please date stamp the extra copy of the first page of the Answer and return it to me in the enclosed, self-addressed, stamped envelope.

If you have any questions or concerns please do not hesitate to contact our office at (970) 385-4401.

Best regards,



Leah Mumford
Paralegal

Cc: The Honorable Pearl E. Casias (w/encl.)
Thomas Johnson (w/encl.)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
ATTENDING CLERK

Docket No. WDWA-0802011-0079

In the Matter of:

Maralex Disposal, LLC

Respondent

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**RESPONDENT'S ANSWER TO PROPOSED PENALTY COMPLAINT
AND REQUEST FOR HEARING**

COMES NOW Respondent, Maralex Disposal, LLC ("Maralex"), by and through its undersigned counsel, William E. Zimsky, Abadie & Schill, P.C., and in response to the Proposed Penalty Complaint and Notice of Opportunity for Hearing dated September 27, 2011 and received by Maralex on September 30, 2011, states the following:

1. The statements set forth in Paragraph 1 of the Complaint are legal statements to which no response is required.
2. Maralex is without sufficient information to admit or deny the allegation set forth in Paragraph 2 of the Complaint and therefore denies same.
3. Maralex admits that the EPA is alleging that Maralex has violated certain regulations and the Safe Drinking Water Act ("the Act"), but denies that such allegations are true for the reasons set forth below.

4. Paragraph 4 of the Complaint contains legal statements to which no response is required.

5. Paragraph 5 of the Complaint contains legal statements to which no response is required.

6. Paragraph 6 of the Complaint contains legal statements to which no response is required.

7. Paragraph 7 of the Complaint contains legal statements to which no response is required.

8. Maralex admits the allegations set forth in Paragraph 8 of the Complaint.

9. Maralex admits the allegations set forth in Paragraph 9 of the Complaint.

10. Maralex admits the allegations set forth in Paragraph 10 of the Complaint.

11. With respect to the allegations set forth in Paragraph 11 of the Complaint, Maralex states that the Ferguson # 1 well is located in what the Colorado Oil and Gas Conservation Commission has designated as a natural gas field known as the Ignacio Blanco Field and admits the remaining allegations set forth in the Complaint.

12. Maralex admits the allegations set forth in Paragraph 12 of the Complaint.

13. Maralex admits the allegations set forth in Paragraph 13 of the Complaint.

14. Maralex admits that it is authorized to operate the Ferguson # 1 Well by EPA permit # CO21011-06908 ("the Permit"). Maralex admits that it is required to comply with all of the conditions of the Permit, but also states that those conditions are subject to interpretation and that Maralex is justified in relying on the interpretations and statements made by EPA personnel regarding the conditions of the Permit.

15. Maralex denies the allegations set forth in Paragraph 15 of the Complaint to the extent that it implies that Maralex is required to take weekly measurements of annulus pressure and asserts that the Permit requires Maralex to make weekly observations of annulus pressure.

16. Maralex admits that it did not make consistent weekly observations of the annulus pressure. However, Maralex did observe the annulus pressure several times per month and, on some occasions, several times per week.

17. Paragraph 17 of the Complaint contains legal statements to which no response is required. Maralex notes that 40 C.F.R. § 146.8 sets forth the standards for mechanical integrity for injection wells.

18. Maralex admits that the EPA observed on May 5, 2010 and May 25, 2010 that the Ferguson # 1 well had annulus pressure as set forth in the EPA's Notice of Violation dated June 7, 2010. The remaining allegations of Paragraph 18 summarized correspondence from the EPA to Maralex dated July 7, 2010 and from Maralex to the EPA dated July 6, 2010. The correspondence between the parties speaks for itself and Maralex denies any statement, allegation or legal conclusion set forth in Paragraph 18 or elsewhere in the Complaint that is inconsistent with and/or contrary to the correspondence between the parties. Maralex also denies any legal statement made in such correspondence that is inconsistent with and/or contrary to the applicable regulations and/or statutes. Maralex notes that the July 6, 2010 Notice of Violation does not assert that the Ferguson # 1 well lacked mechanical integrity, only that "the well may lack mechanical integrity."

19. Maralex admits the first sentence of Paragraph 19 of the Complaint. Maralex admits that the EPA conducted a site inspection on April 13, 2011. Maralex states that the

results of the annulus pressure observations are set forth in the April 19, 2011 Notice of Violations sent to Maralex. The correspondence between the parties speaks for itself and Maralex denies any statement, allegation or legal conclusion set forth in Paragraph 18 or elsewhere in the Complaint that is inconsistent with and/or contrary to the correspondence between the parties. Maralex also denies any legal statement made in such correspondence that is inconsistent with and/or contrary to the applicable regulations and/or statutes.

20. Maralex admits that the Ferguson # 1 was operating between May 5, 2010 and May 24, 2011, but denies the allegation that it failed to maintain mechanical integrity for the Ferguson # 1 Well between at least May 5, 2010 and May 24, 2011. Although the annulus pressure was above zero during several EPA inspections, the Ferguson # 1 Well never failed a mechanical integrity test and never failed to meet the requirements for mechanical integrity set forth in the Permit and applicable regulations.

21. Maralex admits the allegations set forth in Paragraph 21 of the Complaint.

22. Maralex denies the allegations set forth in Paragraph 22 of the Complaint because although the reporting of the annulus pressure in the 2010 report was incorrect, there is no requirement to make any report of these pressures. The EPA was aware that during 2010, the annulus pressures were more than zero. Thus, there was no incentive to mislead the EPA regarding those pressures. The incorrect listing of the pressures was a clerical error that was based on incomplete information.

23. The proposed civil penalties are disproportional to any violations that may have occurred. First, although Maralex did not observe the annulus pressure for the well on a consistent weekly basis, Maralex did check the pressure frequently, sometimes several times per

week. Second, prior to the July 7, 2010 letter to Maralex, EPA Inspector Nathan Wisner was aware of the annulus pressure issue at the Ferguson # 1 Well and advised Maralex to continue to bleed the pressure off of the annulus of the well as it had been doing and required no further action. After receiving the July 7, 2010 letter, Maralex provided the EPA with a proposed protocol for testing and repairing, if required, the well if leaks were discovered. The EPA did not require Maralex to shut in the Ferguson # 1 Well until April 19, 2011 and for the first time requested in writing that Maralex conduct a mechanic integrity test of the well. On May 24, 2011, after spending more than \$100,000 to rework the well, Maralex conducted a mechanical integrity test and the Ferguson # 1 passed that test. Finally, reporting of the annulus pressure on the Annual Disposal/Injection Well Monitoring Report is optional. Although Maralex incorrectly reported that pressure as zero, that error was inadvertent and was not meant to mislead the EPA since the EPA was aware that maximum annulus pressure was more than zero.

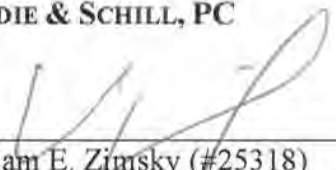
24. No response is required to the statements made in Paragraph 24 of the Complaint.
25. No response is required to the statements made in Paragraph 25 of the Complaint.
26. No response is required to the statements made in Paragraph 26 of the Complaint.

REQUEST FOR A HEARING

Respondent requests a hearing pursuant to 40 C.F.R. § 22.15(c).

Dated this 27th day of October, 2011.

ABADIE & SCHILL, PC



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