

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6

FILED
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EPA REGION 6

In the Matter of § Docket No. SDWA-06-2015-1140
§
§
Performance Energy Resources, LLC §
Barnsdall, OK § CONSENT AGREEMENT
§ AND
Respondent § FINAL ORDER
§
§
Proceedings under Section §
1423(c) of the Safe Drinking §
Water Act, 42 U.S.C. § 300h-2(c) §

I. STATUTORY AUTHORITY

This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) pursuant to Section 1423, 42 U.S.C. § 300h-2, of the Safe Drinking Water Act (“Act”). The Administrator of EPA delegated the authority to issue this CAFO to the Regional Administrator of EPA, who further delegated this authority to the Director of the Compliance, Assurance and Enforcement Division. This CAFO is issued in accordance with 40 C.F.R. § 22.18, as set forth in the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. §§ 22.1 through 22.52.

II. CONSENT AGREEMENT

1. EPA and Performance Energy Resources, LLC (“Respondent”) (collectively “Parties”) agree that settlement of this matter without litigation will save time and resources, that it is in the public interest, and that the entry of this CAFO is the most appropriate means of resolving this matter. Compliance with all terms of this CAFO resolves only those violations alleged by EPA in the administrative complaint (“Complaint”) issued on July 29, 2015.

2. Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in the Complaint or this CAFO. This CAFO states a claim upon which relief may be granted.

3. Respondent expressly waives any right to a hearing regarding penalty assessment or any other issue of law or fact relevant to this proceeding. Respondent further waives all defenses which have been or could have been raised to the claims set out in the previously issued Complaint and waives the right to judicial review of this administrative penalty assessment.

4. Before the taking of any testimony, and without adjudication of any issue of law or fact, the Parties agree to the terms of this CAFO and to its issuance. Respondent consents to the assessment and payment of a civil penalty in the amount and by the method stated below.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

5. At all times relevant to the violations alleged in the Complaint and herein (“relevant time period”), Respondent was a corporation authorized to do business in the State of Oklahoma, and as such, is a “person,” within the meaning of Section 1401(12) of the Act, 42 U.S.C. § 300f(12).

6. Respondent owned or operated an “injection well” which is an “existing Class II well” as those terms are defined at 40 C.F.R. § 147.2902. The injection well is identified as well number 5 (“well”). The well is also identified by EPA inventory number OS4923, and is located in the northwest Quarter of Section 02, Township 26 North, Range 11 East, Big Horse District Field, in Osage County, Oklahoma.

7. Because Respondent owned or operated an injection well, Respondent is subject to underground injection control (“UIC”) program requirements at 40 C.F.R. Part 147, Subpart GGG, which are authorized under Section 1421 of the Act, 42 U.S.C. § 300h.

8. Regulations at 40 C.F.R. § 147.2903(a) require that any underground injection is prohibited except as authorized by rule or authorized by a permit issued under the UIC program. The construction or operation of any well required to have a permit is prohibited until the permit has been issued. The term “permit” is defined at 40 C.F.R. § 147.2902.

9. Regulations at 40 C.F.R. § 147.2909 provide that existing injection wells (wells authorized by the Bureau of Indian Affairs and constructed or completed on or before the effective date of the Osage UIC program) are authorized by rule. Owners or operators of wells authorized by rule must comply with the provisions of 40 C.F.R. §§ 147.2903, 147.2905, 147.2907, and 147.2910 through 147.2915.

10. The well is authorized by rule in accordance with 40 C.F.R. § 147.2909.

11. Regulations at 40 C.F.R. § 147.2912(a) require each well authorized by rule to have mechanical integrity. A well has mechanical integrity if there are no significant leaks in the casing, tubing, or packer and there is no significant fluid movement into an “Underground Source of Drinking Water” (“USDW”) through vertical channels adjacent to the well bore. The term USDW is defined at 40 C.F.R. § 147.2902.

12. Regulations at 40 C.F.R. § 147.2905 require an injection well to be plugged within one year after termination of injection. Regulations at 40 C.F.R. § 147.2905 also set out administrative and technical requirements to be followed when plugging an injection well.

13. July 3, 2012 and February 27, 2013 Mechanical Integrity Test (“MIT”) inspection reports show the well failed to demonstrate mechanical integrity. The February 27, 2013 inspection report also shows Respondent declared plans to convert the well to production.

14. EPA’s August 7, 2013 letter notified Respondent that the well was overdue for plugging.

15. On April 23, 2014, an EPA representative inspected the well and observed that Respondent was using the well for underground injection of fluids.

16. On September 10, 2014, EPA issued an Administrative Compliance Order, SDWA-06-2014-1112 ("AO") to Respondent for violations related to maintaining and operating "the well" in a manner that may contaminate USDWs.

17. Respondent's October 9, 2014 response to the "AO" indicated plans for future use. EPA's November 14, 2014 letter approved Respondent's plan to repair, achieve mechanical integrity and operate the well as an injector.

18. On January 12, 2015, EPA made final the "AO" issued to Respondent on September 10, 2014.

19. A March 10, 2015 inspection report indicates the well was not plugged, the fluid level in the well tubing and annulus was equalized within fifty feet of the lower zone of the USDW, the well was not connected, or injecting, and Respondent had not demonstrated mechanical integrity.

20. On June 18, 2015, Respondent submitted plans to plug and abandon the well.

21. On July 29, 2015, EPA issued Administrative Complaint Docket Number SDWA-06-2015-1140 to Respondent pursuant to Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), setting forth findings of fact and conclusions of law hereby incorporated by reference, and proposing to assess a civil penalty against Respondent. The Complaint provided notice of Respondent's opportunity to request a hearing on the proposed administrative penalty assessment.

22. The Complaint alleges that Respondent violated regulations at 40 C.F.R. §§ 147.2905, 147.2909 and 147.2912(a)(1), by failing to properly plug and abandon the well and operate it without mechanical integrity of the casing, tubing, and packer. Respondent also failed to comply with the January 12, 2015 EPA final AO.

23. EPA notified the public of the Complaint and afforded the public thirty (30) days to comment on the Complaint and proposed penalty. At the expiration of the notice period, EPA received no comments from the public.

IV. PENALTY ORDER

24. Based on the foregoing stipulations, EPA Region 6, having taken into account the factors used for assessment of civil penalties found in Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), hereby orders and Respondent agrees to pay to the United States a civil penalty in the amount of six thousand six hundred dollars (\$6,600.00) to settle the violations alleged in the Complaint. Payment shall be made within thirty (30) days of the effective date of this CAFO by one of the following methods:

- a. By mailing a bank check, cashier's check, or certified check payable to "Treasurer, United States," to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

- b. By wire transfer to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

c. By overnight mail (Express, FedEx, DHL, etc.) to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2GL
St. Louis, MO 63101
Phone: 314-418-1028

d. By credit card payments to <https://www.pay.gov>
(Insert SFO 1.1 in the search field)

“In the Matter of Performance Energy Resources, LLC, Docket No. SDWA-06-2015-1140” should be clearly marked on the check, or other remittance, to ensure proper credit is given when payment is received.

25. Respondent shall send simultaneous notices of payment, including copies of the check or instrument of payment, to each of the following:

- a. Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
- b. Chief, Water Legal Branch (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

26. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

27. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States that are not paid by the due date and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to

accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

28. If all or part of a payment is overdue, EPA will impose a late-payment handling charge of fifteen dollars (\$15.00), with an additional delinquent notice charge of fifteen dollars (\$15.00) for each subsequent thirty (30)-day period. EPA will also apply a six percent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date. Penalties under other Federal statutes for failure to make timely payment may also apply.

29. Failure by Respondent to pay the penalty assessed according to the terms of this CAFO in full, by its due date, may subject Respondent to a civil action to collect the assessed penalty and any accrued interest or penalties.

30. In the event a collection action is necessary, Respondent shall pay, in addition to any applicable penalty, fees, and interest described herein, all reasonable costs and expenses, including legal expenses and court costs, incurred by the United States for enforcement and collection proceedings for nonpayment of the amounts agreed hereunder. In any such collection action, the validity, amount, and appropriateness of the penalty, and the terms of this CAFO, shall not be subject to review.

V. COMPLIANCE ORDER

31. Pursuant to Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), EPA orders and Respondent consents to take the following actions and provide evidence of compliance:

- a. Plug the well according to regulations at 40 C.F.R. § 147.2905 by October 31, 2015, or
- b. Convert the well to production use by October 31, 2015, or
- c. If the Respondent plans to use the well for fluid injection in the future, apply for an EPA UIC Injection Permit by October 31, 2015.

V. GENERAL PROVISIONS

32. To execute this Agreement, Respondent shall sign and forward a copy of this CAFO, with original signature, to:

Mr. Efren Ordonez
Office of Regional Counsel (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733


33. Issuance of this CAFO does not relieve Respondent from responsibility to comply with all requirements of the Act and the requirements of any permits issued thereunder, nor does it constitute a waiver by EPA of its right to enforce compliance with the requirements of any applicable permits or other requirements of the Act by actions under the authority of the Act, except as to any requirement to pay any penalty or perform any corrective action not described herein for the violations alleged in the Complaint.

34. The provisions of this CAFO shall be binding upon Respondent, its officers, directors, managers, agents, representatives, employees, successors and assignees.

Each party agrees to bear its own costs and attorneys' fees in this matter, except to the extent that Respondent may be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the terms of this CAFO.


35. Each undersigned representative of the Parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms of this agreement and legally bind that party.

In recognition and acceptance of the foregoing:



For Performance Energy Resources
(Please sign and return original)

8/24/15
Date



John Blevins
Director
Compliance Assurance and
Enforcement Division

10.20.15
Date

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of October, 2015, the original of the foregoing CAFO was hand-delivered to the Regional Hearing Clerk (6RC-D), EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that true and correct copies were placed in the United States mail, first class, postage prepaid, addressed to each of the following:

Copy by certified mail
return receipt requested: Performance Energy Resources, LLC
P.O. Box 628
Barnsdall, OK 74002

Copy: Bureau of Indian Affairs, Osage Agency
P.O. Box 1539
Pawhuska, OK 74056

Osage Nation ENR Department
100 West Main St., Ste. 304
Pawhuska, OK 74056

Copy hand-delivered: Mr. Efren Ordonez
Office of Regional Counsel
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Date: 10/21/2015

Jackie Allen