UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8
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HEARING CLERK

IN THE MATTER OF:	)	Proceeding under Section 1423
	)	of the Safe Drinking Water Act,
Maralex Disposal, LLC	)	42 U.S.C. § 300h-2
	)	
	)	
Respondent.	)	
	)	

INITIAL DECISION

This is an action by the United States Environmental Protection Agency Region 8 (Complainant or EPA) pursuant to section 1423(c) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2(c), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Respondent is Maralex Disposal, Inc. (Respondent or Maralex), a Colorado corporation in the oil and gas produced water disposal business. In its Complaint, EPA alleges that Respondent failed to take weekly annulus pressure measurements, failed to maintain mechanical integrity of a Class II underground injection well in a timely manner, and inaccurately reported in its Annual Well Monitoring Report and thus violated the SDWA. Complainant seeks a penalty of $111,650.

In its Answer, Respondent admitted to certain violations. (See, Answer, pp. 3-4, ¶¶ 16, 18, 21). In addition, Respondent stipulated to liability as to the failure to take weekly annulus pressure measurements and inaccurately reporting in its Annual Well Monitoring Report for 2010 in the Stipulations of Fact, Exhibits and Testimony. (See, Stipulations, ¶¶ 9, 20).[1]

[1] 40 C.F.R. §144.28(h) states, "The owner or operator shall submit reports to the Director as follows....For Class II wells:

Therefore, I find liability as to the failure to take weekly annulus pressure measurements and inaccurate reporting in Respondent's 2010 Annual Well Monitoring Report and these counts are not addressed in this Initial Decision.[2]

On December 28, 2011, I issued a Scheduling Order setting forth dates for Prehearing Exchange to be filed. On February 15, 2012, Complainant filed its Prehearing Exchange. On February 29, 2012, Respondent filed its Prehearing Exchange. On May 16, 2012, Complainant filed a Status Report indicating the parties were unable to negotiate a settlement and requested that the matter be scheduled for hearing. After substitution of counsel, EPA filed a Motion to Supplement the Prehearing Exchange on July 3, 2012.[3] On July 19, 2012, a Pretrial Order was filed setting dates for stipulations, dispositive motions and a final pretrial conference. The parties filed Stipulations of Facts, Exhibits and Testimony (Stipulations) on August 20, 2012.[4] No dispositive motions were filed.

(i) An annual report to the Director summarizing the results of all monitoring, as required in paragraph (g)(2) of this section. Such summary shall include monthly records of injected fluids, and any major changes in characteristics or sources of injected fluids. Previously submitted information may be included by reference.

Section II(D) of Respondent's permit requires compliance with these reporting requirements. (See, Stipulated Exhibit 2). Respondent admits to violating this permit condition by inaccurately reporting the monthly annulus pressue in its 2010 Annual Well Monitoring Report and failing to observe weekly annulus pressure measurements. (See, Tr. 88/7, Stipulations 20 & 21). In addition, Respondent admits in its Answer that it observed the annulus pressure several times a month and, on occasion, observed the pressure weekly. (See, Ans. ¶16). This admission was presented again through the testimony of Ms. Roberts at the hearing. (See, Tr. 90-91).

[2] In Respondent's Proposed Findings of Facts and Conclusions of Law (Post Hearing Brief) filed December 17, 2012, Respondent admitted again to the violations alleged in the Complaint other than Count II failure to maintain mechanical integrity of the subject well. (See, Post Hearing Brief, pp.17-18, ¶¶ 13, 15). Liability as to Count II and the appropriate penalty for all three counts will be addressed herein.

[3] Respondent did not file any further supplement to its Prehearing Exchange.

[4] A Supplemental Stipulation of Exhibits was filed on October 15, 2012, after the hearing, to reflect exhibits, mostly demonstrative in nature, that were presented at the hearing.

On October 10, 2012, a one-day evidentiary hearing was held in Durango, Colorado.[5] Complainant called three witnesses and Respondent called three witnesses to testify. The record of the hearing consists of a stenographic transcript as well as 38 stipulated exhibits. At the hearing, Complainant presented its case on liability and penalty for Counts I-III. Respondent provided testimony and evidence as to liability primarily with respect to Count II. Respondent moved for a directed verdict as to Count II after the close of Complainant's case. (See, Tr. 125/20). I denied the Motion for Directed Verdict on the basis that Complainant had provided enough evidence for its prima facie case as to Count II, "Failure to Maintain Mechanical Integrity" for the Dara Ferguson Well #1.[6]

Respondent provided very limited testimony on the appropriate penalty to be assessed for the violations alleged in the Complaint. Complainant presented its penalty calculation based on the statutory factors pursuant to section 1423(c) of SDWA, 42 U.S.C. §300h-2, and the Underground Injection Control Program's Judicial and Administrative Orders Settlement Policy (UIC Penalty Policy), dated, September 29, 1993. The parties submitted post hearing briefs in accordance with the schedule established by Order on November 21, 2012. The record of the hearing closed with the submission of the post hearing briefs.

[5] Excerpts of the hearing testimony are referred to herein by the transcript page and line (*i.e.*, Tr. 4/24) number(s).

[6] Respondent argued in support of its motion that "loss of mechanical integrity" and failure to "maintain mechanical integrity" are one and the same. In addition, Respondent claimed EPA presented inconsistent testimony and inadequate evidence as to whether Complainant presented a prima facie case. (See, Tr. 125/20).

I. Background

On May 22, 2006, Maralex was issued Underground Injection Control (UIC) Program Permit, CO21011-06908, for the Dara Ferguson Injection Well #1. (See, Stip. Ex. 2). The UIC permit authorizes Maralex to inject produced water (waste fluids brought to the surface in connection with oil and gas production) into the Dara Ferguson Well #1.[7] (See, Stip. Ex. 33, Tr. 27/2). The waste fluids injected and typically contained in the water are high concentrations of saline produced water, benzene, toluene, ethylbenzene and xylene. (See, Tr. 27-28/9). The well, owned and operated by Maralex, is located within the exterior boundaries of the Southern Ute Indian Reservation. (See, Tr. 26/19).[8] Compared to other Class II injection wells, the Maralex well is considered a large capacity disposal well. (See, Stip. Ex. 33, p. 13, Tr. 29/15).

The UIC permit sets forth the requirements of injecting into the Dara Ferguson Well #1. (See, Stip. Ex. 2). The purpose of the permit is to protect Underground Sources of Drinking Water (USDWs) from contamination. (See, the Act, 40 C.F.R. Part 144 and the permit). Section B of the permit requires demonstration of mechanical integrity and Section C requires that the tubing-casing annulus pressure "shall be maintained at zero (0) psi". (See, Stip. Ex. 2 , pp. 4-7). Complainant alleges that Respondent failed to maintain mechanical integrity, consistent with its UIC permit, after many instances of excess annulus pressure between May, 2010 and May, 2011.[9]

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[7] Permit CO21011-06908 remained in effect as of the date of the hearing. There was no evidence that it had been modified, revoked and reissued or terminated. At hearing, EPA witness Nathan Wiser testified that permit CO21011-06908 was still in effect and therefore a valid permit. (See, Tr. 76/1).

[8] The Safe Drinking Water Act authorizes EPA to regulate in Indian Country, 42 U.S.C. §300h-1.

[9] The record shows that the annulus pressure recordings at the Dara Ferguson Well #1 were as follows: May 5, 2010 (1,725 psi)(Stip Ex. 8); May 26, 2010 (1,840 psi)(Stip. Ex. 9); April 13, 2011 (1,670 psi)(Stip. Ex. 13); May 24,

Respondent contends there was no "loss of liquid" due to the increase in annulus pressure. (See, Tr.160/24, 161/7). Instead, Respondent argues that the increase in annulus pressure was temperature related or thermal heating and then later due to two loose connections of tubing (See, Tr. 43/20, Stip. Ex. 10; Tr. 172/12); and therefore, the annulus pressure was "intermittent and not consistent." (See, Stipulations, ¶ 18). Respondent's expert witness Dennis Reimers testified that initially the leaks were likely thermal related but there were leaks causing increases in annulus pressure. (See, Tr. 158/22). Respondent argues that because there was never a loss of mechanical integrity, the issue hinges on whether "failure to maintain mechanical integrity" and "loss of mechanical integrity" are the same for purposes of permit compliance.

Complainant supports its position that Respondent failed to maintain mechanical integrity through evidence provided at the hearing. On May 5, 2010, EPA inspected the well and observed excess annulus pressure. (See, Stip. Ex. 8, Tr. 40/10). The well was re-inspected by EPA on May 26, 2010 and there was excess annulus pressure observed again. (See, Stip. Ex. 9, Tr. 43/20). On June 7, 2010, EPA issued a Notice of Violation (NOV) letter addressing the well's lack of mechanical integrity. (See, Stip. Ex. 10, Tr. 44-45/19). The NOV stated, "If annular pressure cannot successfully be maintained at zero psi, the well may lack mechanical integrity". *Id.* The NOV also informed Respondent that the permit requires the well maintain mechanical integrity and Respondent had 30 days to describe what action it intended to take to address the issue. *Id.*

On July 6, 2010, Respondent sent a letter to EPA stating what it had done to address the lack of mechanical integrity. (See, Stip. Ex. 11, Tr. 45-46/18). The letter stated, "Initially we believed this pressure to be due to the liquid expansion due to thermal issues...The nature of how

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2011 (1050-1035 psi)(Stip. Ex. 17); November 9, 2011 (Stip. Ex. 1) and November 29, 2011 (1050 psi)(Stip. Ex. 25).

soon this pressure builds back now implies that we may have a 'pinhole' leak in the system". *Id.* The letter further stated that Maralex will keep EPA apprised of the actual test dates and/or any work done on the well.[10] *Id.* While the letter suggests that Respondent was scheduled to work on the well August, 10, 2010, the evidence shows work on the well to address the leaks was not done.[11] *Id.* (See, Tr. 75/13, 154-155).

On April 13, 2011, EPA inspected the well and determined that the well was operating and no work to repair the leaks was done by Respondent. (See, Stip. Ex. 13, Tr. 88-89). EPA inspector, Ms. Sara Roberts, observed during the inspection that " the pressure on the annulus had nearly equalized with the pressure on the injection string....at that time of the inspection, the annulus pressure was over 95 percent of the injection pressure". (See, Tr. 89-90). Ms. Roberts testified that the allowable injection pressure for this well was 2,000 pounds per square inch and the well was injecting at 1,750 pounds per square inch. *Id.* The pressure level indicates that the well lacked mechanical integrity. *Id.* (See also, Stip. Ex. 2).

On April 19, 2011, EPA issued a second NOV to Maralex citing the failure to maintain mechanical integrity in addition to the other two counts already admitted to by Respondent. (See, Stip. Ex. 15, Tr. 91/16). The NOV required Respondent to comply with its permit, Part II(B)(4), which states a well shall be shut in and not resume injection until mechanical integrity is restored and written authorization to inject from EPA is received. (See, Stip. Ex. 2, Tr. 92/3). EPA phoned Mr. Dennis Reimers of Maralex on May 3, 2011 to check on the status of the well. (See, Stip. Ex. 17, Tr. 92/17). A follow up conversation occurred on May 3, 2011 to discuss a

[10] The record indicates that there was no follow up from Respondent after the July 6, 2010 letter. The next communication from Respondent was its 2010 Annual Well Monitoring Report where it inaccurately reported annulus pressures. (See, Stip. Ex. 12, Tr. 75/13).

[11] Respondent testified that EPA gave Respondent verbal approval to move forward with the work in September, 2010. (See, Tr. 155/14, 168/4).

temperature log anomaly that could be an indicator of a leak. (See, Stip. Ex. 15, Tr. 93/20). Respondent never initiated contact with EPA.[12] On May 24, 2011, Respondent worked on the well and performed a mechanical integrity test. The results showed that the well passed mechanical integrity. (See, Stip. Ex. 17, Tr. 95/19). EPA then granted Respondent permission to resume injection into the Dara Ferguson Well #1. (See, Tr. 96/5, 174/11).

II. Determination of Liability

A. Burden of Proof

The Consolidated Rules governing this proceeding address the burdens of proof and persuasion placed upon the parties and provide in pertinent part as follows: ". . . (a) The complainant has the burdens of presentation and persuasion that the violation occurred as set forth in the complaint and that the relief sought is appropriate. . .The respondent has the burdens of presentation and persuasion of any affirmative defenses. . . (b) Each matter of controversy shall be decided by the Presiding Officer upon a preponderance of the evidence." 40 C.F.R. § 22.24.

The issues in this case cover both liability and penalty and, based upon the Administrative Complaint as drafted, are as follows:

1. Whether Maralex, during the period May 5, 2010 to May 24, 2011, a) violated the SDWA, 42 U.S.C. §300f, et seq., the regulations promulgated pursuant to the Act, 40 CFR §144.51 (q)(1), 40 CFR §144.52(a)(6), and permit # CO21011-06908, by failing to maintain mechanical integrity of the Dara Ferguson Well #1 Class II disposal well and b) violated the SDWA, 40 CFR 144.51(a) and permit # CO21011-06908, by failing to

[12] Permit condition, III.B.5, requires the Permittee to notify EPA and get approval before work is done on the well. The evidence is not clear whether Respondent notified EPA after the April 19, 2011 NOV regarding re-work of the well.

observe annulus pressure as well as inaccuratly reporting in its 2010 Annual Well Monitoring Report.

2. If Maralex is found liable for the above violations, whether the imposition of an $111,650 penalty is appropriate.

The issue of liability as to maintaining mechanical integrity is addressed here. The other two Counts have already been admitted to and ruled on (see above).

B. Count II: Maintaining Mechanical Integrity

Paragraphs 17 through 21 of the Complaint contain the allegations pertaining to maintaining mechanical integrity:

> 17. The mechanical integrity of permitted injection wells must be established and maintained as required by 42 U.S.C. § 300h-2 (c)(1) and 40 C.F.R § 144.51(q)(1).
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> 18. EPA observed that the Ferguson #1 well had significant annulus pressure during an inspection on May 5, 2010 and again on May 26, 2010. On June 7,2010, EPA issued to Respondent a Notice of Violation notifying Respondent of this finding and Respondent's failure to comply with the requirement to maintain the well's mechanical integrity pursuant to 40 C.F.R §§ 144.51 (q)(1), and the requirement to maintain zero annulus pressure pursuant to the permit at Part II (C)(6). EPA received a letter from Respondent on July 8. 2010, wherein Respondent outlined a work over plan and stated that Maralex would contact EPA once dates of the work over and/or testing were known.
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> 19. As of April 13, 2011, EPA had not received any additional information from Respondent regarding the Ferguson #1 well. On April 13, 2011, EPA conducted a site inspection and observed significant annulus pressure build up on the Ferguson #1 well. On April 19, 2011, EPA issued to Respondent another Notice of Violation notifying Respondent of this finding and Respondent's failure to comply with the requirement to maintain mechanical integrity according to 40 C.F.R § 144.51(q)(l) and to maintain zero annulus pressure pursuant to the permit at Part 1I(C)(6). Respondent sent a work over report to EPA describing a tubing leak repair and results of a follow up mechanical integrity test conducted on May 24, 2011.
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> 20. Respondent violated 40 C.F.R § 144.51(q)(1) and the permit at Part II(C)(6) and therefore the Act by failing to maintain mechanical integrity for the Ferguson #1 well between at least May 5, 2010 and May 24, 2011. Annual monitoring reports submitted to EPA and EPA inspectors' observations indicate that the Ferguson #1 well was operating during this period of time.

Complaint, p. 3.

The above-referenced Part II Section C.6 of the permit provides:

> The tubing-casing annulus (TCA) shall be filled with water treated with a corrosion inhibitor, or other fluid approved by the Director. The TCA valve shall remain closed during normal operating conditions and the TCA pressure shall be maintained at zero (0) psi.
> If TCA pressure cannot be maintained at zero (0) psi, the Permittee shall follow the procedures in Ground Water Section Guidance No. 35 "Procedures to follow when excessive annular pressure is observed on a well". (See, Stip. Ex. 2, p. 7).

The guidance referenced in the permit, Guidance No. 35, was published by EPA, Region 8 on April 19, 1994.[13] The guidance was written to help determine the cause of annular pressure. Guidance 35 states, "Use Section Guidance 35 to determine if the well has experienced a loss of mechanical integrity. If you find that there is a loss of mechanical integrity, use Headquarters Guidance No. 76 – Follow-up to loss of Mechanical Integrity for Class II Wells to bring the well back into compliance". (See, Stip. Ex. 34, p.1).

As noted, paragraph 20 of the Complaint specifically states that 40 CFR § 144.51(q)(1) and Part II(C)(6) of Respondent's permit require that mechanical integrity be maintained. While both parties testified that Guidance 35 is used in determining the cause of annulus pressure, and thus whether there is a failure to maintain mechanical integrity, it seems immaterial here. Respondent admits to "pinhole leaks" and the fact that Maralex staff had to "bleed off about a barrel of liquid and the annulus pressure was reduced to zero." Respondent also admits that two loose connections were found during rework of the well. (See, Tr. 172/16-25, 145/23).[14] Respondent's position is that leaks and pressure are constant when it comes to wells like this.

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[13] This guidance is not a notice and comment rulemaking. It is intended as guidance and is not legally binding on EPA or Respondent.

[14] Respondent provides much testimony on the thickness and build of the well. The expert testimony of Mr. Reimers indicates that great care was taken in going above the industry standard to "over build" this well for protection. (See, Tr. 140-143). This testimony is tangential and may illustrate why there was no loss of mechanical integrity, but it does not rebut Respondent's liability.

Respondent first argues that the failure to maintain annulus pressure was due to thermal fluctuation. (See, Tr. 146/5). However, as Complainant shows, recurring pressure on the annulus over a period of time indicates more than just thermal fluctuation occurred and the excess annulus pressure was more likely caused by a leak and/or loose connections. (See, Tr. 47/10).

Complainant has met its burden of proof that the Dara Ferguson Well #1 failed to maintain mechanical integrity from May of 2010 to May of 2011. The evidence shows that the well had annulus pressure and was unable to maintain the permit limit of "0". (See, Stip. Ex. 2, p.37). Respondent's argument that the well never failed mechanical integrity does not overcome the preponderance of the evidence showing it is more likely than not that the violations occurred.

I am persuaded that Complainant has sufficiently established a violation of the permit and the regulations. The Environmental Appeals Board (EAB) provides precedent for giving considerable weight to the Agency's interpretation of its regulations. See, *In Re Lazarus*, 7 E.A.D. 318, 353 (EAB 1997). Especially when, like here, the permit conditions are not being challenged. In fact, Respondent does not dispute most of the facts presented at hearing and entered into evidence. Respondent instead chooses to hang its hat on the distinction of "no loss of mechanical integrity". It is true that there is no evidence that the well had a total loss of mechanical integrity. Yet, Respondent attempts to rebut EPA's case by indicating there is no evidence to prove that "no water could be leaking into a USDW", "no fluid from the well migrated from the wellbore into surrounding foundations" and that there was never "a significant flow from the well that was not controlled by Maralex". (See Tr. 205-206). These statements do not address the simple question of liability under the SDWA of failure to comply with a permit condition.

I find that Respondent failed to maintain mechanical integrity of the Dara Ferguson Well #1 from May of 2010 to May of 2011. I further find Respondent is liable for failure to accurately report the annulus pressure for 2010 and observe weekly the annulus pressure in violation of the SDWA, 40 C.F.R. 144.51(a) and the permit. I now turn to the second question of whether a penalty of $111,650 is appropriate.

III. Determination of Civil Penalty

Section 22.27 of the Consolidated Rules provides in part:

> (b) *Amount of civil penalty.* If the Presiding Officer determines that a violation has occurred and the complaint seeks a civil penalty, the Presiding Officer shall determine the amount of the recommended civil penalty based on the evidence in the record and in accordance with any penalty criteria set forth in the Act. The Presiding Officer shall consider any civil penalty guidelines issued under the Act. The Presiding Officer shall explain in detail in the initial decision how the penalty to be assessed corresponds to any penalty criteria set forth in the Act. If the Presiding Officer decides to assess a penalty different in amount from the penalty proposed by complainant, the Presiding Officer shall set forth in the initial decision the specific reasons for the increase or decrease.

Section 1423(c)(4)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(4)(B), provides that:

> In assessing any civil penalty under this subsection, the Administrator shall take into account appropriate factors, including. (i) the seriousness of the violation; (ii) the economic impact (if any) resulting from the violation; (iii) any history of such violations; (iv) any good-faith efforts to comply with the applicable requirements; (v) the economic impact of the penalty on the violator; and (vi) such other matters as justice may require.

The Consolidated Rules establish that the Complainant has the burdens of presentation and persuasion that the relief sought is appropriate. 40 C.F.R. § 22.24(a). As the EAB has determined, this burden goes to the appropriateness of the penalty taking all factors into account:

> For the Region to make a prima facie case on the appropriateness of its recommended penalty, the Region must come forward with evidence to show that it, in fact, considered each factor identified in [the statute] and that its recommended penalty is supported by its analysis of those factors. [Footnote omitted.] The depth of consideration will vary in each case, but so long as each factor is touched upon and the penalty is supported by the analysis a prima facie case can be made. Once this is accomplished, the burden of going forward shifts to the respondent. To rebut the Region's case, a respondent is required to show

> (1) through the introduction of evidence that the penalty is not appropriate because the Region had, in fact, failed to consider all of the statutory factors or (2) through the introduction of additional evidence that despite consideration of all of the factors the recommended penalty calculation is not supported and thus is not 'appropriate.'

New Waterbury, Ltd., 5 E.A.D. 529, 538-39 (EAB 1994).

In this case, Complainant based its penalty calculation on the statutory factors set forth in the Safe Drinking Water Act and Agency guidance. In addition to the UIC Penalty Policy, general enforcement policies GM-21 and GM-22 were used.[15]

Because the UIC Penalty Policy is a settlement policy and not a penalty policy for pleading purposes, I will rely on the statutory factors for determining the penalty set forth at Section 1423(c)(4)(B) of the Act as well as the general guidance documents that discuss economic benefit and gravity. (See, Stip. Ex. 3- 5). Complainant argues that these guidance documents helped Complainant prepare the proposed penalty of $111,650, based on the statutory factors. Complainant breaks down the penalty for each violation as follows: 1) failure to maintain mechanical integrity, $99,700; 2) failure to observe weekly annulus pressure, $8,050; and 3) inaccurate reporting, $3,900. (See, Stip. Ex. 1, p.2). Application of the penalty criteria to specific circumstances is highly discretionary. See, *In Re Pepperell Assocs.*, 9 E.A.D. 83, 107 (EAB 2000), *aff'd*, 246 F.3d 15 (1st Cir. 2001).

Complainant argues that the evidence introduced at the hearing demonstrates that it could have calculated a much higher penalty if the Agency had strictly applied the statutory maximum for each violation per day of violation and that Respondent did not present credible evidence that would justify any reduction to the amount of the proposed penalty. (See, Compl. Post Hearing

[15] See, Stip. Ex. 4-5. GM-21 and 22 set forth goals, including capturing economic benefit and gravity components in any penalty, but do not provide specific guidance on how to calculate a penalty. The UIC Penalty Policy provides specific criteria for calculating a penalty for settlement purposes. It does not address how to calculate penalties in non-settlement scenarios. See, *In Re C.E. McClurkin d/b/a J.C. Oil Company*, 2000 EPA RJO LEXIS 86 (February 10, 2000). These policies are guidance documents and are not binding on the Presiding Officer's decision.

Brief, p. 24). Respondent argues that the penalty assessed is excessive because Maralex is a relatively small company, Maralex over-designed the well to prevent any significant leaks and last, because "the water that is injected into the well is extremely clean, minimizing any alleged harm to the underground source of drinking water".[16] (See, Resp. Post Hearing Brief, p. 17). I have reviewed the parties' arguments, in conjunction with the record, and formulated the penalty below.

A. Count III Penalty Analysis

With respect to Count III, inaccurate reporting, Respondent admits to the violation and provided no evidence or testimony that the penalty should be reduced. Based on all the statutory factors, the $3,900 penalty is appropriate. Inaccurate reporting, is a less serious violation but is still critical to the UIC program. It is impossible for the Agency to determine proper compliance without accurate data. The integrity of the UIC program and, thus, the protection of USDWs depends in large part upon accurate self-reporting by well operators. Annual reporting can serve as a reminder to well operators to comply with UIC Class II well requirements while allowing EPA to evaluate quickly compliance with regulatory requirements designed to protect the integrity of the wells and prevent harm to the environment. The duration of the violation was 12 months as reflected in the 2010 Annual Monitoring Report. There was no economic impact on Respondent for this violation. Complainant did not adjust the penalty for any other factors.

There was testimony that Respondent has been in the injection control business for over 20 years. (See, Tr.178/6). The disconnect between Respondent's years of experience and expertise, as evidenced by the testimony of Respondent witnesses Mr. Reimers and Mr. O'Clare,

[16] Respondent presented no evidence at the hearing or in testimony that the water is extremely clean and therefore minimizes any harm to USDWs. This argument was raised for the first time in the post hearing brief and will not be used as a mitigating factor in analyzing the penalty.

and the lack of understanding and significance of the regulations is concerning. Respondent stated in its Answer that annual reporting is optional. (See, Ans. ¶ 22). Respondent should have known the significance of accurate reporting given its years in business. Harm to the statutory program is sufficient to warrant an appropriate penalty.[17] After reviewing the statutory factors, I find the $3,900 penalty appropriate.[18]

B. Count I and II Penalty Analysis

1. The Seriousness of the Violation

The first statutory factor to consider is the seriousness of the violation. This is the majority of the gravity component of the penalty. (See, Stip. Ex. 3, p.7). The UIC Penalty Policy provides that several elements are to be considered in evaluating the seriousness of a violation, including (1) the potential of a particular violation to endanger underground sources of drinking water; (2) the number of wells in violation; (3) the importance of maintaining the integrity of the SDWA's regulatory scheme; and (4) the length of violation. (See, Stip. Ex. 3, p. 7-9, and Appendix A).

As to the first element, it is significant that the statute defines the term "endanger" to include any injection which may result in the presence of contaminants in underground sources of drinking water. 42 U.S.C. § 300h(d)(2). Thus, a violation need not rise to the level of actually causing harm to the environment for it to be of a serious nature. See, *Carroll Oil Co.,* 10 E.A.D. 635, 657 (EAB 2002) (seriousness of a violation is or can be based on potential rather than actual harm); see also, *Everwood Treatment Co., Inc.*, 6 E.A.D. 589, 603 (EAB 1996), *aff'd*,No. 96-1159-RV (S.D. Ala. Jan. 21, 1998) (certain violations may have "serious implications" for the

[17] See full discussion below on harm to the program as a basis for calculating the gravity component of the penalty.

[18] Based on Respondent's admission to the violation and no argument against the penalty, I accept Complainant's penalty without any further analysis.

[statutory] program and can have a "major" potential for harm regardless of their actual impact on humans and the environment). The UIC Penalty Policy itself speaks to the "potential" for such endangerment.

a. Failure to maintain mechanical integrity (Count II)

Mechanical integrity is one of the cornerstones of an effective UIC program because it is the simplest and most appropriate method to show mechanical soundness of the well both in construction and operation and lack of migration of fluids to USDWs. A leak in the casing, tubing or packer of a well or any fluid movement adjacent to the wellbore, may cause contamination of an underground source of drinking water. (See, Stip. Ex. 2, p.4). Respondent testified that a leak was occurring in the casing and thereby increasing the risk of contamination. (See, Tr. 172/17). There was also evidence and testimony that Respondent's well passes through multiple USDWs that provide drinking water and are in current use by seven public water systems and numerous private wells. (See, Stip. Ex. 32-33/7-8; Tr. 30/2-17). The Dara Ferguson Well #1 is one and a half miles from the closest drinking well. *Id.* Complainant produced ample evidence at the hearing to demonstrate the potential for environmental harm that can result from failure to maintain mechanical integrity of underground injection control wells. This evidence included testimony from Ms. Victoria Lynn Schmitt of the La Plata County Planning Department who works directly with the oil and gas community in land use permits for wells. Ms. Schmitt testified that residents in the county are concerned about leaking wells into groundwater. (Tr. 125/8).

However, the regulations state at 40 C.F.R. 146.8 that: an injection well has mechanical integrity if: 1) there is **no significant** leak in the casing, tubing or packer; and 2) there is **no significant** fluid movement into an underground source of drinking water through vertical

channels adjacent to the inject well bore. (emphasis added). I agree with Respondent that Complainant provided no evidence on how significant the leak or amount of fluid movement was with respect to the Dara Ferguson Well #1.[19] While failure to maintain mechanical integrity is a serious violation, it is not clear how significant the violation is other than the close proximity to drinking water sources.

Complainant used the UIC Penalty Policy to categorize failure to maintain mechanical integrity as a Level I in terms of seriousness. The UIC Penalty Policy has three levels for categorizing serious violations. Level I is the most serious and includes violations that threaten human health or the environment and/or violate critical provisions of the UIC regulations and SDWA.[20] (See, Stip. Ex. 3, p. 7; Stip. Ex. 5, p.14). Loss of mechanical integrity is clearly a Level I violation and most serious. I would agree that the loss of mechanical integrity in a well warrants a large penalty. However, the Complaint alleges, "failure to maintain" not "loss" of mechanical integrity. (See, Compl. ¶ 20). Thus, the largest penalty amount is not appropriate here.

Complainant took this into consideration in its penalty calculation by assigning a monetary value in "the lower 25 percent range because mechanical integrity had been restored at the time of penalty assessment". (See, Comp. Post Hearing Brief, p. 26, Tr. 104/17). Respondent argues that the Agency's selection of a high seriousness level was driven solely by the category of the violation, not a specific evaluation of the circumstances of each violation. The UIC Penalty Policy advises that particularized circumstances of individual cases can lead to

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[19] Evidence to show a significant leak or fluid movement for the purpose of understanding how significant the harm was could have been provided in the form of testimony or evidence. For instance, information on the well being a conduit for contamination to USDWs, the identification of the contaminants that enter the well, the known carcinogens and how they harm would help in demonstrating significance.

[20] Level II and III violations are less serious and range from violations that include failure to report and other reporting aspects of the UIC Program. (See, UIC Penalty Policy).

a change in the level of violation.[21] In fact, the regulatory provision 40 C.F.R. §144.51(q)(1), failure to maintain mechanical integrity, is not listed as a Level I violation in the Policy. (See, Stip. Ex. 3, Appendix A).

In addition, the seriousness of a violation can rest on the potential for harm under the SDWA in calculating the penalty as long as the potential for harm has a sufficient factual basis. In *Gypsum North Corp., Inc.*, CAA-02-2001-1253, 2002 EPA ALJ LEXIS 70, *26 (Nov. 1, 2002), the Administrative Law Judge rejected EPA's penalty calculation because the policy at issue there "afford[ed] no individualized assessment of the particular facts surrounding the violation." Here, Complainant never presented a case of actual loss of mechanical integrity. While Respondent was not diligent in addressing the excessive annulus pressure nor did Respondent promptly shut in and re-work the well, Respondent did ultimately perform a mechanical integrity test and passed. (See, Stip. Ex. 17).

As noted in another UIC Initial Decision, "While Complainant made a prima facie case for, and appropriately considered, the SDWA statutory factor of seriousness of violation in recommending an assessed penalty, testimony introduced by Respondent at the Hearing has sufficiently rebutted EPA's calculation of the seriousness of the violation." *In Re Gene A. Wilson*, Docket No. SDWA-04-2005-1016 (Aug. 20, 2008 at 34). In the *Wilson* case, Respondent provided the Regional Judicial Officer (RJO) with enough evidence to demonstrate the potential for harm was very limited. *Id.* In the case before me, I do find the potential for harm is high given the admitted leak and movement of fluid. However, there was not enough

[21] See, UIC Penalty Policy, Appendix A, footnote 1 which states, "[t]his list of violations is intended only as guidance. Unique circumstances of individual cases may lead case teams to classify violations not listed here as Level I violations or to classify a violation listed here at a different level".

evidence to warrant classifying this violation as the most serious kind of violation under the UIC regulatory scheme.[22]

I find that the seriousness factor for failure to maintain mechanical integrity should be reduced to a Level II violation, based on the facts before me, and thereby reduces this portion of the penalty to $40,000.[23] Reducing the violation to Level II may appear to be diminishing the harm. To the contrary, the lack of due diligence in addressing the constant annulus pressure exceedances warrants a sizable penalty and an adjustment to the gravity component, as addressed below. Respondent still violated the Act in a serious manner by failing to maintain mechanical integrity.

b. Failure to Observe Weekly Annulus Pressure (Count I)

Complainant calculated a penalty of $8,050 for failure to comply with the permit condition that requires weekly observations of the annulus pressure. (See, Stip. Ex. 1, p.6). Ms. Roberts testified that "the Agency considers this either a serious violation or a most serious violation. Routine monitoring of the annulus specifically allows the operator to identify issue that may occur within their well as they arise. And so it is a critical requirement for protecting underground sources of drinking water to be able to detect issues that may arise quickly". (See, Tr. 38/11 & 102-103).

Respondent admits that it violated the requirement to make weekly observations but maintains the penalty proposed is excessive. (See, Resp. Post Hearing Brief, p. 17). Respondent argues that Complainant's calculation of the gravity component is flawed because it fails to

[22] If the Agency was concerned about the mechanical integrity of this well to warrant a true "serious violation" scenario, it seems the Agency had the prerogative to require Respondent to shut-in the well immediately upon discovery of excess annulus pressure instead of waiting over a year to do so.

[23] As noted above, this matter is not about loss of mechanical integrity but the failure to maintain mechanical integrity.

consider specific facts including the inspections that showed once Maralex "bled off the annulus pressure to zero, the pressure did not return and there was no flow", and the fact the Agency did not follow its own procedures. (See, Resp. Post Hearing Brief, p, 15-16). Respondent further argues that the testimony and affidavit of expert Nathan Wiser and fact witness Sara Roberts are insufficient to establish the seriousness of the violations because neither presented any factual evidence showing a significant leak. *Id.*

This violation seems to be the critical aspect of this case. There is considerable evidence and testimony indicating excess annulus pressure readings at inspections and during conversations between the parties. (See, Stip. Ex. 8-11, 13,15-16). Respondent admitted knowledge of non-compliance with its permit, inspections showed non-compliance and Respondent admitted there was a leak. (See, Stip. Ex. 11). In toto, Respondent's failure to check weekly on the status of the annulus pressure is very troubling. Not only did the Respondent's permit require weekly observations, but Respondent's total disregard to check the annulus pressure weekly, when high readings showed excess pressure, appears to run afoul of proper management of this well. It seems that excessively high annulus pressure readings are the first clear sign of an issue and the point where the potential for harm begins. As noted above, the Dara Ferguson Well #1 is within 5 miles of many drinking water sources on the Southern Ute Indian Reservation. This is reason enough to show a potential environmental threat and I find as such.

Despite my conclusion of the clear potential threat to the environment due to the leak and excess annulus pressure, the seriousness of the violation should not only take into account actual and potential harm, but programmatic harm as well. See, *In Re Phoenix Construction Services, Inc.*, 11 E.A.D. 379, 396-400 (EAB 2004); *Predex Corp.*, 7 E.A.D. 591, 601-02 (EAB

1998)(violation of FIFRA's registration requirements is programmatic harm which alone is sufficient to support a substantial penalty).[24] With respect to programmatic harm, Complainant should have focused the penalty more fully on the severe nature of Respondent failing to follow its permit. Complainant asserts the mechanical integrity violation warrants a higher penalty due to the programmatic impact. (See, Comp. Post Hearing Brief, p. 27-28, 34). Yet the Complainant also needed to develop how the violation impacts severity to the program when a member of the regulated community fails to comply with its permit especially when there is evidence of potential harm. Since the penalty is intended to be a fair and equitable treatment of the regulated community, it is appropriate to assess a penalty that achieves consistency as well as deterrence.[25] I find this case to be about Respondent's failure to operate properly and in such a cavalier manner. This violation should be considered most serious under the Agency's rubric of seriousness. Thus, I find this count to be a Level I violation with respect to seriousness under the UIC Penalty Policy. Based on my analysis, the penalty for Count I is $10,000.

2. Duration of the Violations

This factor accounts for the ongoing nature of the violations by increasing the penalty as the length of time of the violations continues. For Count II, Complainant used a 12 month duration.[26] (See, Stip. Ex. 1, p.4 & 6). For Count I, Complainant relied on the pumper's statement that measurements were taken every 6 to 8 months and only used a 7 month duration

[24] GM-22 also discusses the "importance of the regulatory scheme" as a factor in determining the gravity of a penalty.

[25] See, GM-21 and 22. "The penalty should persuade the violator to take precautions against falling into noncompliance again (specific deterrence) and dissuade others from violating the law (general deterrence)". GM-21, p. 3.

[26] Complainant alleges the well had not maintained mechanical integrity for more than 12 months but forgave 90 days and based its calculation on the date Respondent believed there was a leak in the well.

of violation. (See, Stip. Ex. 1, p.5). Respondent testified that Mr. Reimer and/or Mr. O'Clare checked the annulus every 3-4 weeks. (See, Tr. 201/14). I see no reason to reduce the penalty for the duration of the violation with respect to failure to observe the annulus pressure especially with an admission from the Respondent that monitoring did not occur in compliance with the permit. The gravity should be increased by 20% due to the length of time it took Respondent to address the violations.

3. The Economic Impact (If Any) Resulting from the Violation

The SDWA and the UIC Penalty Policy require consideration of the economic impact resulting from the violation. Complainant calculated a total economic benefit component of $678.00 --Count I- $537.00, Count II- $141.00, Count III - $0-- based on best information available on the costs of compliance.[27] For Count II, Ms. Roberts testified that economic benefit reflects the deferred cost of the well workover. Ms. Roberts testified that a "conservative estimate" for the work is $13,000. (See, Tr. 105/24, Stip. Ex. 1, p.4). Without the benefit of testimony or evidence on how the $13,000 delayed cost translates into $537.00 in economic benefit, it is difficult to verify the veracity of this number. With respect to Count I, Complainant provided no foundation for the $141.00 in economic benefit.

A more accurate proposed penalty for economic benefit would have been to substantiate through evidence and/or a calculation of the economic benefit based on the delayed cost. There is no evidence in the record indicating how these numbers were derived and therefore, I cannot determine if the economic benefit is appropriate. See, *In Re C.E. McClurkin d/b/a J.C. Oil Company*, 2000 EPA RJO LEXIS 86 (February 10, 2000). In *McClurkin,* the RJO declined to

[27] Complainant used the BEN Model to calculate economic benefit for delayed costs for Count I. (See, Stip. Ex. 1). However, there was no evidence provided at the hearing to explain this calculation. Therefore, the BEN model is not considered here.

assess a penalty for economic benefit for a mechanical integrity test and failure to report violations. *Id.* Without BEN calculations, the method traditionally provided to justify economic benefit, or evidence in the form of testimony from the person who calculated the penalty, the Agency forces the decision maker to pull a number out of the ground, figuratively. The overall importance of this statutory factor makes it difficult to disregard; however, in the absence of calculations, I cannot accept the Agency's numbers without ample support. Therefore, I decline to impose the proposed penalty for economic benefit of $678.00.

4. History of Such Violations

The SDWA and the UIC Penalty Policy require consideration of the compliance history of Respondents in assessing an administrative penalty. Complainant considered this factor and while prior violations were noted the Agency did not increase the penalty based on this factor. (See, Stip. Ex. 1, p.4-5). I decline to adjust the penalty as well.

5. Any Good Faith Efforts to Comply

Good faith efforts to comply with the applicable requirements of the SDWA shall be taken into account in assessing the penalty. 42 U.S.C. § 300h-2(c)(4). The UIC Penalty Policy provides that gravity may be adjusted downward or upward based on the Respondent's attempt in good faith to comply with the SDWA. According to the Policy, good faith efforts to comply may include: (1) prompt reporting of noncompliance, (2) level of effort put forth to correct the violation, (3) prompt correction of an environmental problem prior to an enforcement action being taken. (See, Stip. Ex. 3, UIC Penalty Policy, p.11). The EAB has described "good faith efforts to comply" as "diligence, concern or initiative" evidenced by prompt response to agency inquiries about compliance status, keeping regulatory agencies informed of the physical

conditions of its facilities, and seeking and following up on guidance from the agencies on how to work towards compliance. See, *Carroll Oil Co.*, 10 E.A.D. at 660-61.

Complainant reduced the penalty for Count II based on Respondent's efforts to return the well to compliance prior to the enforcement action. There was no reduction for Count I (See, Stip. Ex. 1). As noted by the EAB in *Carroll Oil*, diligence, concern or initiative showing a prompt response warrants consideration. *Id.* In this matter, Respondent lacked diligence or initiative to address the leak in the casing even after written notice to re-work the well. (See, Stip. Ex. 11). EPA gave Respondent many opportunities to be proactive, especially after each inspection and NOV. Respondent's actions, or lack thereof, warrant a 30% increase in the gravity component. In addition, Respondent's level of effort to comply with its permit, the regulations and the Act given its years of experience and expertise with the injection control program warrants an additional 20% increase in the penalty. Therefore, a 50% increase in the gravity should be applied to the penalty for lack of effort to comply.

6. Economic Impact of the Penalty on the Violator (Ability to Pay)

The SDWA and the UIC Penalty Policy require the Agency to consider the economic impact of the penalty on the violator in assessing a penalty. Complainant did not reduce the penalty based on this factor (See, Stip. Ex. 1, p.5). Complainant argues that "Respondent did not assert an ability to pay claim nor provide relevant financial information warranting a downward adjustment to the gravity portion of the penalty calculation". (See, Comp. Post Hearing Brief, p. 29). Respondent maintains that it is a relatively small business which averages $60,000 per year in income. (See, Resp. Post Hearing Brief, p. 17). However, the evidence and testimony indicates a range of income for the period of the violation from approximately $519,000 to

$430,000. (See, Stip. Ex. 26 and 38). Expense statements and balance sheets do not provide enough information to determine an inability to pay the penalty. *In The Matter of: T&K Customs*, 2002 EPA RJO LEXIS 4 (August 14, 2002) (emphasizing the importance that respondent enter financial information on its ability to pay a penalty into the record, in its post-hearing submissions, to avoid any adverse inference being drawn from its inaction). The burden to demonstrate inability to pay, as with the burden of demonstrating the presence of mitigating circumstances, rests with the Respondent. See, *In re: New Waterbury, Ltd.* 5 E.A.D. 529 (1994). Thus, the penalty is not reduced based on an inability to pay.

Respondent's basic contention is not that a penalty is unwarranted but rather the penalty is disproportionate to the violations. (See, Resp. Post Hearing Brief, p. 17). However, Respondent provided very little evidence to rebut Complainant's case. There was ample opportunity to explicitly walk through its financial situation and explain to the Agency prior to the hearing, and at hearing to the Presiding Officer, why the penalty is excessive and Respondent is unable to pay. In fact, by a preponderance of the evidence, Complainant proved Respondent's lack of understanding of the permit and the UIC regulations.

7. Such Other Matters as Justice May Require

Finally, the SDWA requires the Agency to take into account "such other matters as justice may require". Complainant asserts this factor does not apply to the circumstances of this case. (See, Stip. Ex. 1, p.5). Respondent did not address this factor. Therefore, I find no reason to apply this factor to the penalty.

C. **Penalty Conclusion**

While I find the penalty calculation vague and lacking in appropriate detail to justify Complainant's analysis, I do find that a substantial penalty is appropriate in this matter. Accordingly, I calculate the penalty as follows:

Count III:	$3,900
Count I and II:	$85,000
Total:	$88,900

The breakdown is as follows;

Economic Benefit : $0

Gravity : $85,000

Seriousness of the Violations: Count I $10,000 + Count II $40,000 = $50,000

Duration of Violations 20% Increase (Count I & II): $50,000 x .20 = $10,000

Good Faith Efforts to Comply 50% Increase (Count I & Count II):

$50,000 x .50 = $25,000

Penalty:

(50,000 +$10,000+$25,000) + 3,900 = $88,900

Upon consideration of the statutory penalty factors, the evidence at hearing and the administrative record in this matter, Respondent is assessed a penalty of $88,900.

IV. Findings of Fact and Conclusions of Law

In accord with section 22.27(a) of the Consolidated Rules, 40 C.F.R. § 22.27, the undersigned Presiding Officer's Findings of Fact and Conclusions of Law of this proceeding are as follows:

1. Respondent, Maralex Disposal Inc., is doing business in the state of Colorado and therefore is a person as that term is defined in section 1401(12) of the SDWA, 42 U.S.C. §300(f) and 40 C.F.R. § 144.3.

2. Respondent owns and operates the Dara Ferguson Well #1 located within the exterior bouondaries of the Southern Ute Indian Reservation.

3. Respondent was issued a UIC permit, CO-21011-06908 on May 22, 2006 in accordance with 40 C.F.R. § 146.21.

4. The SDWA, 42 U.S.C. §300(g) *et seq.* and 40 C.F.R. § 144.51 require that Respondent comply with all conditions of the permit. Noncompliance constitutes a violation of the SDWA and its implementing regulations.

5. The permit authorizes Respondent to inject produced water (waste fluids brought to the surface in connection with oil and gas production) into the Dara Ferguson Well #1.

6. UIC wells are designed to dispose the produced water. If a well leaks it can contaminate USDWs.

7. The purpose of the permit is to protect USDWs from contamination.

8. The permit requires demonstration of mechanical integrity and Section C requires that the tubing-casing annulus pressure "shall be maintained at zero (0) psi".

9. Respondent failed to maintain mechanical integrity, consistent with its UIC permit, after many instances of excess annulus pressure.

10. May 5, 2010, EPA inspected the well and observed excess annulus pressure.

11. The well was re-inspected by EPA on May 26, 2010 and there was excess annulus pressure observed again.

12. On June 7, 2010, EPA issued a Notice of Violation letter addressing the well's lack of mechanical integrity. The letter also informed Respondent that the permit requires the well maintain mechanical integrity and Respondent had 30 days to describe what action it intended to take to address the issue.

13. On July 6, 2010, Respondent sent a letter to EPA stating what it had done to address the lack of mechanical integrity. The letter states, "Initially we believed this pressure to be due to the liquid expansion due to thermal issues. ..The nature of how soon this pressure builds back now implies that we may have a 'pinhole' leak in the system".

14. Respondent submit an Annual Well Monitoring Report, pursuant to permit condition, D(4), for the year 2010 that showed zero psi for each month of that year. This report was inaccurate.

15. On April 13, 2011, EPA inspected the well and determined that the well was operating without any work to repair the leaks by Respondent. EPA observed excess annulus pressure during the inspection.

16. The pressure levels indicate that the well was not maintaining mechanical integrity.

17. On April 19, 2011, EPA issued a second Notice of Violation to Respondent citing the failure to maintain mechanical integrity.

18. The Notice of Violation required Respondent to comply with its permit, Part II(B)(4), which states a well shall be shut in and not resume injection until mechanical integrity is restored and written authorization to inject from EPA is received.

19. On May 24, 2011, Respondent worked on the well and performed a mechanical integrity test.

20. The violations of failure to maintain mechanical integrity, failure to observe annulus pressure weekly and failure to accurately report warrant a penalty for violations of the SDWA.

21. Section 1423(c)(4) of the SDWA, 42 U.S.C. § 300h-2(c)(4), sets forth the following factors to be considered in assessing a civil penalty: (i) the seriousness of the violation; (ii) the economic impact (if any) resulting from the violation; (iii) any history of such violations; (iv) any goodfaith efforts to comply with the applicable requirements; (v) the economic impact of the penalty onthe violator; and (vi) such other matters as justice may require.

22. The UIC Penalty Policy and GM-21 and 22 are based on the statutory factors set forth in the SDWA.

23. Complainant has the burdens of presentation and persuasion that the relief sought is appropriate.

24. Complainant has proposed a penalty of $111,650 for the violations for which Respondent has been found liable.

25. The violation of failure to maintain mechanical integrity for the Dara Ferguson Well #1 warrants a penalty calculated on the basis of a serious violation under the SDWA and the UIC Penalty Policy.

26. The violation of failure to observe weekly annulus pressure at the Dara Ferguson #1 Well warrants a penalty calculated on the basis of a serious violation under the SDWA and the UIC Penalty Policy.

27. The seriousness of the violation proven in this matter warrants a total gravity for the above violations of $85,000.

28. The economic benefit resulting from the violations was not sufficiently explained and is $0.

29. The violation of failure to accurately report in 2010 for the Dara Ferguson Well #1 warrants a penalty of $3,900 as calculated by the Complainant and not objected to by Respondent under the SDWA and the UIC Penalty Policy.

I have considered the entire administrative record of this proceeding including, but not limited to, the pleadings, the transcript of the hearing, all proposed findings, conclusions and supporting arguments of the parties in formulating this Initial Decision. To the extent that the proposed findings and conclusions submitted by the parties, and the arguments made by them, are in accordance with the findings and conclusions stated herein, they have been accepted, and to the extent they are inconsistent, they have been rejected.

ORDER

1. A civil penalty of $88,900 is assessed against Respondent Maralex Disposal, LLC.

2. Payment of the full amount of this civil penalty must be made within thirty (30) days after this Initial Decision becomes a final order under 40 C.F.R. § 22.27(c) as provided below. Payment shall be made by submitting a certified or cashier's check payable to the "Treasurer, United States of America," to:

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

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent must simultaneously send copies of the check and transmittal letter to the Regional Hearing Clerk at this address:

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

3. Pursuant to 40 C.F.R. § 22.27(c), this Initial Decision will become the final order of the agency 45 days after service upon the parties and without further proceedings unless (1) a party moves to reopen the hearing within 20 days after service of this Initial Decision, pursuant to 40 C.F.R §22.28(a); (2) an appeal to the Environmental Appeals Board is taken within 30 days after this Initial Decision is served upon the parties; or (3) the Environmental Appeals Board elects, upon its own initiative, to review this Initial Decision, pursuant to 40 C.F.R. §22.3 0(b).

Date: July 8, 2013

Elyana R. Sutin
Presiding Officer

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **INITIAL DECISION** in the matter **MARALEX DISPOSAL, INC. ; DOCKET NO.: SDWA-08-2011-0079** was filed with the Regional Hearing Clerk on July 8, 2013.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Amy L. Swanson, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. A true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt requested and e-mailed on July 8, 2013, to:

Attorney for Respondent:

William E. Zimsky (#25318)
Abadie, Schill
1099 Main Avenue, Suite 315
Durango, CO 81301
wez@oilgaslaw.net

And e-mailed to:

Honorable Elyana R. Sutin
Regional Judicial Officer
U. S. Environmental Protection Agency – Region 8
1595 Wynkoop Street
Denver, CO 80202

July 8, 2013

Tina Artemis
Paralegal/Regional Hearing Clerk