

MATTHEW L. WOLFORD

ATTORNEY AT LAW

638 West 6th Street
Eric, PA 16507

814/459-9600

July 7, 2011

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Re: *In re: Swamp Angel Energy, LLC*, Docket No. SDWA-03-2011-0160-DU

Dear Regional Hearing Clerk:

Enclosed for filing please find the original and one copy of my *Notice of Appearance* and Respondent's *Answer to Proposed Administrative Order and Complaint for Penalty*, along with a Certificate of Service. Please be advised that Respondent requests both a hearing and a settlement conference.

Thank you.

Sincerely,



Matthew L. Wolford

enclosures (5)

cc: Kelly Gable, Assistant Regional Counsel (w/ enclosures)
Swamp Angel Energy, LLC (w/ enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, PA 19103-2029

IN THE MATTER OF:

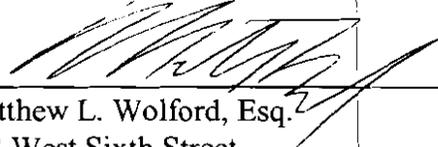
Swamp Angel Energy, LLC.
2414 N. Woodlawn, Ste. 160
Wichita, KS 67220-3900

Docket No. : SDWA-03-2011-0160-DU

Respondent.

NOTICE OF ENTRY OF APPEARANCE

Please enter my appearance in the above-captioned matter on behalf of Respondent,
Swamp Angel Energy, LLC. I am authorized to accept service on behalf of Respondent in this
matter.



Matthew L. Wolford, Esq.
638 West Sixth Street
Erie, PA 16507
(814) 459-9600
PA Supreme Court I.D. No. 47182

Date:

7-7-11

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, PA 19103-2029**

IN THE MATTER OF: :

Swamp Angel Energy, LLC. :
2414 N. Woodlawn, Ste. 160 :
Wichita, KS 67220-3900 :

Docket No. : SDWA-03-2011-0160-DU

Respondent. :

**ANSWER TO PROPOSED ADMINISTRATIVE ORDER
AND COMPLAINT FOR PENALTY**

AND NOW comes Swamp Angel Energy, LLC. ("Respondent") and files this Answer to Proposed Administrative Order and Complaint for Penalty, stating as follows:

1. Denied as legal conclusions to which no responsive pleading is required.
2. Admitted in part; denied in part. It is admitted only that Complainant proposes to assess a civil penalty against Respondent in the amount of \$157,500.00. The remaining averments are denied as legal conclusions to which no responsive pleading is required.
3. Admitted in part; denied in part. It is admitted only that Respondent was notified as averred. The remaining averments are denied as legal conclusions to which no responsive pleading is required.
4. Denied as legal conclusions to which no responsive pleading is required. By way of further answer, Respondent believes that Commonwealth of Pennsylvania has not acquired primacy of the UIC program, and that Complainant administers and enforces the

UIC program in Pennsylvania.

5. Denied as a legal conclusion to which no responsive pleading is required.

6. Denied as a legal conclusion to which no responsive pleading is required.

II. FINDINGS OF FACT

7. Denied as a legal conclusion to which no responsive pleading is required.

8. Admitted in part; denied in part. It is admitted only that Otter Exploration, Incorporated ("Otter") previously acted as an agent of Respondent with respect to certain activities related to the EPA's UIC program. It is denied that Otter has or had authority to generally act on behalf of Respondent; and strict proof thereof, if relevant, is demanded.

9. Denied. Respondent is without sufficient knowledge or information to form a belief as to the truth of the averment concerning a letter dated April 6, 2006; and strict proof thereof, if relevant, is demanded. By way of further answer, under cover letter dated July 24, 2007, John McNally, President of Otter, submitted to EPA's UIC program on behalf of Respondent an Application for Region III Injectivity Test related to a well referred to as Well No. 3-87, which cover letter and application speak for themselves.

10. Denied. Respondent is without sufficient knowledge or information to form a belief as to the truth of the averment concerning a letter dated October 2, 2007; and strict proof thereof, if relevant, is demanded. By way of further answer, Respondent believes that a letter was issued by the EPA granting approval for Otter to conduct an injectivity test (which letter would speak for itself), but Respondent has been unable to locate the letter in its files. By way of further answer, injectivity testing was performed, and Mr. McNally

subsequently submitted to EPA's UIC program (under cover letter dated December 20, 2007) a UIC permit application for Well No. 3-87, which permit was issued by EPA on August 6, 2008.

11. Admitted.

12. Admitted in part; denied in part. It is admitted only that EPA issued to Otter a "Notice of Deficiency" dated February 26, 2008, which Notice speaks for itself. By way of further answer, Respondent is without sufficient knowledge or information to form a belief as to the truth of the averment concerning EPA's deliberations; and strict proof thereof, if relevant, is demanded.

13. Admitted.

14. Admitted.

III. FINDINGS OF VIOLATION

15. Denied for the reasons set forth in Paragraph 10, above, which is incorporated by reference herein.

16. Denied. Respondent is without sufficient knowledge or information to form a belief as to the truth of the averment concerning what and when EPA became aware of certain information; and strict proof thereof, if relevant, is demanded.

17. Admitted in part; denied in part. It is admitted only that EPA issued a letter to Respondent dated August 13, 2010, which letter speaks for itself. The remaining averments are denied as Respondent is without sufficient knowledge or information to form a belief as to their truth; and strict proof thereof, if relevant, is demanded.

18. Admitted only that the undersigned submitted a response letter dated September 10, 2010

("Response") on behalf of Respondent, which letter speaks for itself.

19. Admitted in part; denied in part. It is admitted only that the undersigned submitted the Response on behalf of Respondent, which Response speaks for itself. It is denied that Respondent admitted in the Response that Respondent illegally disposed of brine into Well No. 3-87. By way of further answer, Respondent admits that a former principal and an employee of Respondent pleaded guilty to unlawfully disposing of brine into two oil production wells between in and around April 2007 to in and around January 2008, and that these wells were not permitted or authorized by rule for underground injection.
20. Admitted in part; denied in part. It is admitted only that the undersigned submitted the Response on behalf of Respondent, which Response speaks for itself. It is denied that Respondent admitted in the Response that Respondent illegally disposed of brine into "Old Glory." By way of further answer, Respondent admits that a former principal and an employee of Respondent pleaded guilty to unlawfully disposing of brine into two oil production wells between in and around April 2007 to in and around January 2008, and that these wells were not permitted or authorized by rule for underground injection.
21. Admitted in part; denied in part. It is admitted only that the undersigned submitted the Response on behalf of Respondent, which Response speaks for itself. By way of further answer, it is denied that Respondent admitted to disposing of a total of 228,480 gallons of brine into the wells. To the contrary, the Response stated as follows:

"Inasmuch as Swamp Angel was not criminally prosecuted, the expenses and payment incurred by it as recommended by EPA and the Forest Service were neither taxable costs nor restitution. As such, Swamp Angel believes that the remedial measures and related costs, along with the payment to the Forest Service, should be sufficient to resolve the

EPA's proposed civil enforcement action related to the unauthorized brine disposal by Swamp Angel employees. Nonetheless, in an effort amicably and finally resolve this matter with EPA, Swamp Angel is willing to pay, as an additional civil penalty, the costs that it would have incurred to properly dispose of the brine at WTC. Based on the information provided by the U.S. Attorney's Office, a total of 68 truckloads (each with a truck capacity 3,360 gallons) were illegally disposed of, for a total of 228,480 gallons. Swamp Angel is also willing to pay the transportation costs that were saved by not hauling the brine to WTC.

As revealed by the above-quoted language, the Response assumed certain information provided by the U.S. Attorney's Office for the purpose of a settlement offer. An assumption made for the purpose of a rejected settlement offer is not an admission. Moreover, as evidenced by the instant proceedings, the EPA rejected the settlement offer. By way of further answer, Respondent admits that a former principal and an employee of Respondent pleaded guilty to unlawfully disposing of brine into two oil production wells between in and around April 2007 to in and around January 2008, and that these wells were not permitted or authorized by rule for underground injection. Respondent is without sufficient knowledge or information to form a belief as to the truth of the averment concerning the amount of brine unlawfully disposed of. Strict proof of the amount of brine disposed of, if relevant, is demanded.

22 Denied. Respondent is without sufficient knowledge or information to form a belief as to the truth of the averment concerning EPA's deliberations; and strict proof thereof, if relevant, is demanded. The remaining averments are denied as legal conclusions to which no responsive pleading is required.

23 Admitted in part; denied in part. It is admitted only that Respondent avoided certain costs

of proper brine disposal as a result of the unauthorized brine injection admitted to by a former principal and an employee, and that this resulted in an economic benefit to Respondent. By way of further answer, Respondent's company management was unaware of and did not authorize the unpermitted brine disposal, and was unaware of any economic benefit that resulted at the time. By way of further answer, Respondent has incurred and continues to incur costs related to the unlawful brine disposal that greatly exceed any economic benefit that was received. By way of further answer, it is denied that Respondent committed the unauthorized injection of 228,480 gallons of brine. Strict proof of the averments in Paragraph 23 of the Complaint, if relevant, is demanded.

24. Denied as a legal conclusion to which no responsive pleading is required.

25. Denied as legal conclusions to which no responsive pleading is required.

**IV. PROPOSED CIVIL PENALTY
AND ORDER FOR COMPLIANCE**

26. Admitted in part; denied in part. It is admitted only that Complainant is proposing to issue a Final Order Assessing Administrative Penalties to the Respondent in the amount of \$157,500.00. The remaining averments are denied as legal conclusions to which no responsive pleading is required.

27. Admitted in part; denied in part. It is admitted only that Complainant is also proposing to issue a Final Order requiring Respondent to submit to EPA for approval a plugging and abandonment plan for the well referred to as "Old Glory." By way of further answer, it is denied that EPA has authority to administer and enforce the Pennsylvania Oil and Gas

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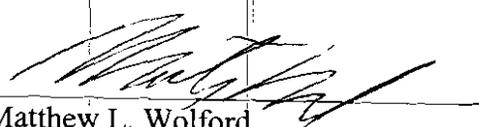
Docket No. : SDWA-03-2011-0160-DU

Respondent.

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the undersigned's *Notice of Entry of Appearance* and Respondent's *Answer to Proposed Administrative Order and Complaint for Penalty*, in the above-captioned matter are being this day served upon the following by first-class, prepaid U.S. mail:

Kelly Gable, Assistant Regional Counsel (3RC00)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029


Matthew L. Wolford
PA I.D. No. 47182
638 West Sixth Street
Erie, PA 16507
Counsel for Respondent

Date:

7-7-11

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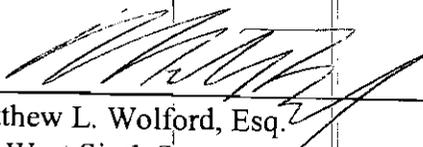
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