

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**REGION 6
Dallas, Texas 75270**

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In the Matter of

Kelley Oil Company

Respondent.

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REGIONAL HEARING CLERK
EPA REGION VI

Docket No. SDWA-06-2021-1105

STATUTORY AUTHORITY

The following findings are made, and Order issued, under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 1423(c) of the Safe Drinking Water Act (the Act), 42 U.S.C. § 300h-2(c). The authority to issue this Order has been delegated by the Administrator to the Regional Administrator of EPA Region 6 who further delegated such authority to the Director of the Enforcement and Compliance Assurance Division. The EPA has primary enforcement responsibility for underground injection within the meaning of Section 1422(c) of the Act, 42 U.S.C. § 300h-1(c), to ensure that owners or operators of Class II injection wells within Osage County, Oklahoma, comply with the requirements of the Act.

FINDINGS

1. Kelley Oil Company (Respondent) is a company doing business in the State of Oklahoma and, therefore, is a "person," within the meaning of Section 1401(12) of the Act, 42 U.S.C. § 300f(12).
2. At all times relevant to the violations alleged herein, Respondent owned or operated an "injection well" which is a "Class II well" as those terms are defined at 40 C.F.R § 147.2902. The injection well is located in the Southeast Quarter of Section 25, Township 25 North, Range 10 East, Osage County, Oklahoma, designated as Well No. 1A and EPA Inventory Number OS1824000 (the well).

3. Respondent is subject to underground injection control (UIC) program requirements set forth at 40 C.F.R. Part 147, Subpart GGG, which are authorized under Section 1421 of the Act, 42 U.S.C. § 300h.
4. Regulations at 40 C.F.R. § 147.2903(a) prohibits any underground injection 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.
5. Regulations at 40 C.F.R. § 147.2903(b) provide that no owner or operator shall construct, operate, maintain, convert, plug, or abandon any injection well, or conduct any other injection activity, in a manner that allows the movement of fluid containing any contaminant into “Underground Source of Drinking Water” (USDW), if the presence of that contaminant may cause the violation of any primary drinking water regulation under 40 C.F.R. Part 142 or may otherwise adversely affect the health of persons. The term USDW is defined at 40 C.F.R. § 147.2902.
6. Regulations at 40 C.F.R. § 147.2909 provide that existing injection wells (wells authorized by the Bureau of Indian Affairs, Osage Agency (BIA Osage)) 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.
7. 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 the USDW through vertical channels adjacent to the wellbore.

8. The well is authorized by rule in accordance with 40 C.F.R. § 147.2909.
9. EPA observed during an October 19, 2019, inspection that the well did not have mechanical integrity and was being maintained in a manner that allowed the movement of fluid containing contaminants into the USDW.
10. Regulations at 40 C.F.R. §§ 147.2905 require that the well must be plugged within one year of termination of injection. All wells must be plugged to prevent movement of fluid into a USDW.
11. Respondent ceased injection and submitted a plugging plan on January 24, 2020.
12. On February 3, 2020, EPA Region 6 approved Respondent's plugging plan and required Respondent to obtain approval from the Bureau of Indian Affairs (BIA) office and notify the Osage UIC office prior to commencing plugging operations. To date, Respondent has not received BIA approval to plug the well.
13. Therefore, Respondent violated regulations set forth at 40 C.F.R. §§ 147.2903(b), 147.2909 and 147.2912(a) by maintaining the well in a manner that could allow the movement of fluid that contains contaminants into an USDW and by failing to successfully demonstrate mechanical integrity.

SECTION 1423(c) COMPLIANCE ORDER

14. Based on the foregoing findings and pursuant to the authority of Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), EPA Region 6 hereby orders Respondent to:
 - a. Cease use of the well for the unauthorized underground injection of fluids, and
 - b. Take one of the following actions:

- i. Repair the well and successfully demonstrate mechanical integrity according to regulations at 40 C.F.R. § 147.2920 and Part I.B. of the permit within ninety (90) days of the date of receipt of a Final Administrative Order; or
 - ii. Complete proper plugging and abandonment in accordance with 40 C.F.R. § 147.2905, within ninety (90) days of a Final Order; or
 - iii. Convert the wells to production and send copies of Osage 139 forms to the Osage ENR Office within thirty (30) days of a Final Order.
15. Submit copies of completed plugging reports or completed work reports showing conversion to production and BIA Osage Agency Forms 139 within one-hundred twenty (120) days of a Final Order to:

David Aguinaga
aguinaga.david@epa.gov
U.S. Environmental Protection Agency
Water Enforcement Branch (ECDWE)
1201 Elm Street, Suite 500
Dallas, TX 75270-2102

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

16. Respondent may request a hearing to contest the issuance of this Section 1423(c) Compliance Order, pursuant to Section 1423(c)(3)(A) of the Act, 42 U.S.C. § 300h-2(c)(3)(A). Such hearing shall not be subject to section 554 or 556 of Title 5 but shall provide a reasonable opportunity to be heard and to present evidence.
17. A request for a hearing must be made within thirty (30) days of the date of receipt of this Proposed Administrative Order. If you would like to request a hearing on this Order, submit the hearing request to the Regional Hearing Clerk (6ORC); U.S. Environmental Protection Agency, Region 6; 1201 Elm Street, Suite 500; Dallas, Texas 75270-2102.

18. Should a hearing be requested, members of the public who commented on the issuance of this Order during the public comment period would have a right to be heard and present evidence at a hearing under Section 1423(c)(3)(C) of the Act, 42 U.S.C. § 300h-2(c)(3)(C).

GENERAL PROVISIONS

19. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. Parts 144, 146, and 147, Subpart GGG, which remain in full force and effect.

20. Issuance of this Order is not an election by EPA to forego any civil or criminal action otherwise authorized under the Act.

21. Violation of the terms of this Order after its effective date or date of final judgment as described in Section 1423(c)(6) of the Act, 42 U.S.C. § 300h-2(c)(6), may subject Respondent to further enforcement action, including a civil action for enforcement of this Order under Section 1423(b) of the Act, 42 U.S.C. § 300h-2(b), and civil and criminal penalties for violations of the compliance terms of this Order under Section 1423(b)(1) and (2) of the Act, 42 U.S.C. § 300h-2(b)(1) and (2).

TAX IDENTIFICATION

22. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of Actions identified under paragraphs 14 and 15 of Section 1423(c) Compliance Order; is restitution, remediation, or required to come into compliance with the law.

SETTLEMENT

23. EPA encourages all parties against whom an administrative order is proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations.

Respondent may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Order, please contact David Aguinaga, of my staff, at (214) 665-6439.

24. If this action is settled without a formal hearing, it will be concluded by issuance of a Final Order.

EFFECTIVE DATE

25. If this action is settled without a formal hearing, it will become final with the issuance of a Final Administrative Order thirty (30) days after the issued date of this Proposed Order, pursuant to Section 1423(c)(6) of the Act, 42 U.S.C. § 300h-2(c)(6).

July 9, 2021

Date



Digitally signed by CHERYL SEAGER
DN: c=US, o=U.S. Government, ou=Environmental Protection
Agency, cn=CHERYL SEAGER
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Date: 2021.07.09 12:44:00 -05'00'

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

CERTIFICATE OF SERVICE

I certify that the foregoing Administrative Order was sent to the following persons, in the manner specified, on the date below:

Signed Original E-mailed: Regional Hearing Clerk (R6ORC)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270
vaughn.loreana@epa.gov

File Stamped Copy
Transmitted via Email: Complainant:
Chang-Vaughan.Ellen@epa.gov; Aguinaga.david@epa.gov

Respondent:
Mr. & Ms. Joe Bob and Lara Kelley
Kelley Oil Company
8689 State Hwy. 11
Barnsdall, OK 74001
larakelley@windstream.net

Copy: Ms. Robin Phillips, Superintendent
Bureau of Indian Affairs, Osage Agency
P.O. Box 1539
Pawhuska, OK 74056
robin.phillips@bia.gov

Ms. Jann Hayman, Director
Osage Nation Environmental and
Natural Resources Department
100 W. Main, Suite 304
Pawhuska, OK 74056
jannhayman@osagenation-nsn.gov

Dated: July 15, 2021

Signed David Aguinaga