

U. S. ENVIRONMENTAL PROTECTION AGENCY-REGION 6

PROPOSED ADMINISTRATIVE ORDER

(NOT A FINAL ORDER)

In the Matter of PEMCO, LLC, Respondent

Docket No. SDWA-06-2020-1103

FILED

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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(e) of the Act, 42 U.S.C. § 300h-1(e), to ensure that owners or operators of Class II injection wells within Osage County, Oklahoma, comply with the requirements of the Act.

FINDINGS

1. PEMCO, LLC ("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 operated injection wells which are Class II wells (Collectively, "the wells") authorized to inject in the Bartlesville formation located in Osage County, Oklahoma, as described below:

Well No.	Inventory No.	Quarter	Location	Hereinafter Referred to as
10	OS3505	Southwest	29 23 North 11 East	"Well No. 10"
63	OS4123	Northwest	32 23 North 11 East	"Well No. 63"
12	OS4390	Southwest	29 23 North 12 East	"Well No. 12"
4-A	OS5050	Northwest	29 23 North 11 East	"Well No. 4-A"
64	OS5620	Northwest	32 23 North 11 East	"Well No. 64"
16	OS5816	Northeast	06 22 North 11 East	"Well No. 16"

3. On or about June 9, 2016, the wells were transferred to the Respondent.

4. 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.

5. Regulations at 40 C.F.R. § 147.2903(a) require that any underground injection is prohibited except as authorized by rule or authorized by 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.

6. Wells No. 4-A (OS5050), 64 (OS5620) and 16 (OS816) are authorized by permit issued under the UIC program in accordance with 40 C.F.R. § 147.2903(a).

7. Regulations at 40 C.F.R. § 147.2909 provide that existing 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 ("ABR"). ABR is defined at 40 C.F.R. § 147.2902. Owners or operators of ABR injection wells must comply with provisions of 40 C.F.R. §§ 147.2903, 147.2905, 147.2907 and 147.2910 through 147.2915.

8. Wells No. 10 (OS3505), No. 63 (OS4123), No. 12 (OS4390) are authorized by rule in accordance with 40 C.F.R. § 147.2909.

9. 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.

10. Regulations at 40 C.F.R. § 147.2903(b) state 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 an USDW.

11. On June 14, 2016, an EPA letter notified Respondent that the wells did not have mechanical integrity. On July 24, 2018, Respondent was notified by EPA letter that the wells were overdue for mechanical integrity tests (MITs).

12. A March 22, 2019, EPA Notice of Violation informed the Respondent of failure to respond to the overdue MIT violations for each of the wells. The Respondent was required to make a written declaration as to future intentions for each of the wells.

13. For ABR Well Nos. 10, 63 and 12, Respondent violated regulations set forth at 40 C.F.R. § 147.2903 by maintaining these wells in a manner that could allow the movement of fluid that contains contaminants into an USDW, and 40 C.F.R. § 147.2912 by failing to successfully demonstrate mechanical integrity.

14. Wells No. 4-A (OS5050), 64 (OS5620), and No. 16 (OS5816) are authorized by permit.

15. Regulations at 40 C.F.R. § 147.2916 require the owner or operator of a new Class II injection well, or any other Class II well required to have a permit in the Osage Mineral Reserve, to comply with the requirements of 40 C.F.R. §§ 147.2903, 147.2907, and 147.2918 through 147.2928.

16. Regulations at 40 C.F.R. §§ 147.2916 and 147.2925(a) require the permittee to comply with all permit conditions, except as authorized by an emergency permit (described at 40 C.F.R. § 147.2906). Respondent did not have an emergency permit for violations described herein.

17. Regulations at 40 C.F.R. § 147.2920(b) and Condition B of the UIC permit require that each well authorized by

permit 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 USDW through vertical channels adjacent to the well bore.

18. For Permitted Well Nos. 4-A, 64 and 16, Respondent violated regulations set forth at 40 C.F.R. § 147.2903 by maintaining these Wells in a manner that could allow the movement of fluid that contains contaminants into an USDW and 40 C.F.R. § 147.2920 and Part I.B. of UIC Permit No. 06S1252P5050 by failing to successfully demonstrate mechanical integrity.

19. The violations, whether for wells authorized by rule or by permit are specified in Attachment A, which is hereby incorporated by reference.

SECTION 1423(c) COMPLIANCE ORDER

20. Based on the foregoing findings and under the authority of Section 1423(c) of the Act, it is hereby ordered that Respondent complete corrective actions to prevent fluids from moving through the wells into an USDW.

21. ABR Well Nos. 10 (OS3505), 63 (OS4123) and 12 (OS4390);

- a. If Respondent chooses to use these wells in the future for the underground injection of fluids, Respondent shall:

- i. Repair the wells and successfully demonstrate mechanical integrity according to regulations at 40 C.F.R. § 147.2912 before injecting fluids into the subsurface within sixty (60) days of a Final Order and;

- ii. Apply for an EPA UIC Permit within sixty (60) days of the Final Order by contacting:

U.S. EPA, Region 6 (WDDG)
Christopher Tingey
tingey.christopher@epa.gov
1201 Elm Street, Suite 500
Dallas, TX 75270-2102
214-665-8364, and

- b. If Respondent chooses not to use the ABR wells for injection of fluid, Respondent shall:

- i. Submit plugging plans to the U.S. EPA Water Enforcement Branch (ECDWE) in Dallas, TX for approval by the EPA in accordance with 40 C.F.R. § 147.2905, within thirty (30) days of a Final Order and;

1. Submit Osage 139 forms to BIA Osage Agency in Pawhuska, OK requesting a work

permit to plug the well within sixty (60) days of a Final Order; and

2. Complete proper plugging and abandonment in accordance with 40 C.F.R. § 147.2905 by February 26, 2021; or

- ii. Submit Osage 139 forms to the BIA Osage Agency in Pawhuska, OK requesting to convert the wells to production use within thirty (30) days of the Final Order, and Respondent shall complete conversion to production on or before February 26, 2021.

22. UIC Permitted Well Nos. 4-A (OS5050), 64 (OS5620) and 16 (OS5186)

- a. If Respondent chooses to use these wells in the future for the underground injection of fluids, Respondent shall:

- i. Repair the wells and successfully demonstrate mechanical integrity according to regulations at 40 C.F.R. § 147.2920 and the referenced permits within one hundred and twenty (120) days of a Final Order.

- b. If Respondent chooses not to use the UIC Permitted wells for the future injection of fluids, Respondent shall:

- i. Submit plugging plans to the U.S. EPA Water Enforcement Branch (ECDWE) in Dallas, TX for approval by the EPA in accordance with 40 C.F.R. § 147.2905, within thirty (30) days of a Final Order.

1. Submit Osage 139 forms to BIA Osage Agency in Pawhuska, OK requesting a work permit to plug the well within sixty (60) days of a Final Order; and

2. Complete proper plugging and abandonment in accordance with 40 C.F.R. § 147.2905 by February 26, 2021; or

- ii. Submit Osage 139 forms to the BIA Osage Agency in Pawhuska, OK requesting to convert the wells to production use within thirty (30) days of a Final Order, and Respondent shall complete conversion to production by February 26, 2021.

23. Respondent shall submit a report of the progress of corrective actions to the address below, within sixty (60) days after the effective date of this Order:

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

24. 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). Submit the hearing request to the Regional Hearing Clerk (6RC-D); U.S. EPA; Region 6; 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102 within thirty (30) days of the date of receipt of this Proposed Administrative Order.

25. A request for hearing should be included in any response to this Order. Respondent must file a response in order to preserve the right to a hearing or to pursue other relief.

26. 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

27. This Section 1423(c) Compliance Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. Part 147, Subpart GGG, which remain in full force and effect.

28. Issuance of this Section 1423(c) Compliance Order is not an election by EPA to forego any civil or criminal action otherwise authorized under the Act.

29. Violation of the terms of this Section 1423(c) Compliance 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).

SETTLEMENT

30. 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 Mr. David Aguinaga, of my staff, at (214) 665-6439.

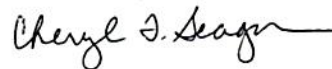
31. If this action is settled without a formal hearing, it will be concluded by issuance of a Final Order.

EFFECTIVE DATE

32. This Proposed Order becomes effective thirty (30) days after issuance unless an appeal is taken pursuant to Section 1423(c)(6) of the Act, 42 U.S.C. § 300h-2(c)(6).

August 13, 2020

Date



Digitally signed by CHERYL SEAGER
DN: c=US, o=U.S. Government, ou=Environmental Protection
Agency, cn=CHERYL SEAGER
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Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division