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EPA REGION III

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

IN THE MATTER OF:) Docket No. SDWA-03-2011-0160-DU
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Swamp Angel Energy, LLC) PROPOSED ADMINISTRATIVE ORDER
2414 North Woodlawn, Suite 160) AND COMPLAINT FOR PENALTY
Wichita, KS 67220-3900)
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)
Respondent) Proceeding to Assess Administrative
) Penalty under Section 1423(c) of the Safe
) Drinking Water Act, 42 U.S.C. § 300h-2(c)

I. STATUTORY AND REGULATORY AUTHORITY

1. This Administrative Penalty Complaint and Notice of Opportunity to Request Hearing (“Complaint”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA” or “Complainant”) by Section 1423(a) and (c) of the Safe Drinking Water Act (“SDWA”), 42 U.S.C. § 300h-2(a) and (c). The Administrator has delegated this authority to the Regional Administrator of EPA Region III who in turn has delegated it to the Director of the Water Protection Division.
2. Pursuant to Sections 1423(a) and (c) of the SDWA, 42 U.S.C. § 300h-2(a) and (c), and in accordance with the enclosed *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits* (“*Consolidated Rules*”), 40 C.F.R. Part 22, Complainant hereby proposes to assess a civil penalty in the amount of One Hundred Fifty-Seven Thousand Five Hundred Dollars (\$157,500) against Swamp Angel Energy, LLC (“Respondent”) for violations of the Underground Injection Control (“UIC”) program requirements detailed below.
3. Pursuant to 40 C.F.R. § 22.14(a)(6), Respondent is hereby notified that the procedures set forth at 40 C.F.R. Subpart I (40 C.F.R. §§ 22.50-.52) apply to this proceeding.

4. Section 1422(c) of the SDWA, 42 U.S.C. § 300h-2(c), requires EPA to administer the UIC program in states that do not have approved state programs (“primacy”). The Commonwealth of Pennsylvania has not acquired primacy of the UIC program. Therefore, effective June 25, 1984, EPA Region III began direct implementation of the UIC program in Pennsylvania. See 40 C.F.R. § 147.1951.
5. The UIC regulations at 40 C.F.R. § 144.11 prohibit any underground injection, except into a well authorized by rule or by permit issued under the UIC program. See also 42 U.S.C. § 300h(b)(1)(A).
6. The regulations at 40 C.F.R. § 144.6(b), define Class II injection wells as wells that inject fluids: (1) “which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an intergral [sic] part of production operations, unless those waters are classified as a hazardous waste at the time of injection”; (2) “for enhanced recovery of oil or natural gas”; and (3) “for storage of hydrocarbons which are liquid at standard temperature and pressure”.

II. FINDINGS OF FACT

7. Respondent is a “person” within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12).
8. Otter Exploration, Incorporated (“Otter”) of Hudson, Ohio is a company acting on behalf of Respondent.
9. In a letter dated April 6, 2006, John McNally, President of Otter, requested approval from EPA’s UIC program to conduct an injectivity test on an inactive production well (API #37-083-14903) located on the National Forest Warrant 2277 in Lafayette Township, McKean County, Pennsylvania. If the injectivity test were to show high permeability, Respondent was to follow up with a formal permit application to complete construction and testing on the well and operate it as a Class II injection well.
10. In a letter dated October 2, 2007, EPA formally granted approval to Otter for conducting an injectivity test on well 3-87 subject to several specific conditions, including:
 - (a.) “Injection Zone – Injection shall occur into the Sliverville Sand through the open hole interval between approximately 1663 feet to 1740 feet. Injection will occur through 3 ½ inch casing on formation/frac packer. The packer shall be set above the upper injection zone at a depth of approximately 1640 feet.”

- (b.) “Test Duration – the injectivity test shall be limited to a maximum of thirty (30) consecutive days.”
 - (c.) “Total Volume Limitation – During the testing period, the total volume of fluid to be injected shall not exceed a maximum of 5000 barrels of brine. The maximum daily rate of injection shall not exceed 500 barrels of brine per day.”
 - (d.) “Maximum Injection Pressure – The maximum injection pressure for this test shall not exceed 467 psi., as measured at the surface.”
 - (e.) “Injection Fluid – Injection fluid shall consist solely of produced fluid (brine) obtained from the Music Mountain facility. The specific gravity of the fluid shall not exceed 1.035.”
 - (f.) “Monitoring – Injection volume and pressure shall be monitored and recorded on a continuous basis. In addition, biweekly fluid level monitoring will be conducted in Wells 3C and D and in the 3 ½ inch annulus of the injection well 101”.
11. On December 20, 2007, Otter, on behalf of Respondent, submitted to EPA a permit application for the operation of well 3-87 on the Allegheny National Forest Warrant 2277.
 12. After reviewing the permit application, EPA identified several deficiencies and other issues that needed further clarification. On February 26, 2008, EPA issued Otter a “Notice of Deficiency” identifying the specific issues that Otter needed to address prior to EPA issuing a permit for the facility.
 13. On April 8, 2008, Otter submitted a response to the deficiencies identified by EPA. EPA determined that Otter had successfully addressed the areas of concern that were listed in the Notice of Deficiency.
 14. On August 6, 2008, EPA issued UIC Permit number PAS2R900BMCK (“permit”) to Respondent for the construction and operation of injection well 3-87. That permit remains in effect.

III. FINDINGS OF VIOLATION

Unauthorized Injection of Brine into “well 3-87” and “Old Glory”

15. By its letter dated October 2, 2007, EPA authorized Otter, on behalf of Respondent, to conduct an injectivity test on well 3-87 pursuant to the conditions detailed in Paragraph 10.

16. In early 2009, EPA became aware of information that Respondent may have conducted unauthorized injection of brine generated at Respondent's oil production facility. Such unauthorized injection was reported to have taken place in wells 3-87 and a nearby well known as "Old Glory".
17. In order to substantiate this information, on August 13, 2010, EPA issued a letter to Respondent requesting specific information related to brine injection carried out by Respondent and its employees.
18. On September 10, 2010, Respondent submitted a response via letter (the "Response") to this information request.
19. Respondent admitted in its Response that it had illegally disposed of brine into well 3-87.
20. Respondent also admitted in its Response that it had illegally disposed of brine into "Old Glory".
21. Respondent admitted in its Response that it had illegally disposed of a total of 228,480 gallons of brine into well 3-87 and "Old Glory".
22. After review of the Response and other applicable information, EPA confirmed that the brine injection described in paragraphs 16 – 21 was outside the prescribed provisions, and therefore in violation, of its injectivity test authorization and 40 C.F.R. § 144.11.
23. In committing the unauthorized injection of 228,480 gallons of brine, Respondent avoided the costs of proper brine disposal, which provided Respondent with an economic benefit.
24. The unauthorized disposal of brine into injection wells with undocumented construction and other safeguards posed a potential for endangerment to underground sources of drinking water.
25. Pursuant to Section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (codified at 28 U.S.C. § 2461) and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, the EPA Administrator is authorized to issue an order requiring compliance and/or assessing administrative penalties against any person who has violated an applicable UIC program requirement. For violations of the UIC program requirements, such as these pertaining to Class II injection wells, which occurred between March 15, 2004 and January 12, 2009, the

Administrator may assess a penalty for each violation in an amount not to exceed \$6,500 per day, and a total penalty in an amount not to exceed \$157,500.

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

26. Based upon the foregoing allegations, and pursuant to the authority of Section 1423(a) and (c) of the SDWA, 42 U.S.C. § 300h-2(a) and (c), Complainant hereby proposes to issue a Final Order Assessing Administrative Penalties to the Respondent in the amount of **One Hundred Fifty-Seven Thousand Five Hundred Dollars (\$157,500)**. This does not constitute a “demand” as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.
27. Complainant hereby also proposes to issue a Final Order requiring Respondent to submit a plugging and abandonment plan for Old Glory to EPA for approval. This plugging and abandonment plan shall be consistent with Title 25 of the Pennsylvania Code, Chapter 78, and require that the well be plugged and abandoned within sixty (60) days of EPA’s written approval of the plan.
28. The proposed penalty was determined after taking into account the factors listed in Section 1423(c)(4)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(4)(B), which include: “(i) the seriousness of the violation; (ii) the economic benefit (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.” In addition, to the extent that facts or circumstances unknown to Complainant at the time of issuance of this Complaint become known after issuance of this Complaint, such facts or circumstances may be considered as a basis for adjusting the proposed administrative penalty.
29. The Regional Administrator or his delegatee may issue a Final Order Assessing Administrative Penalties after thirty (30) days and without further proceedings following Respondent’s receipt of this Complaint, unless Respondent, within that time, either: (1) pays the penalty and submits the plugging and abandonment plan according to the terms of Section V, below; or (2) responds to the allegations in the Complaint according to the terms of Section VI, below.
30. Neither assessment nor payment of an administrative civil penalty pursuant to Section 1423 of the SDWA, 42 U.S.C. § 300h-2, shall affect Respondent’s continuing obligation to comply with the Safe Drinking Water Act, any other Federal or State laws, and with any separate Compliance Order issued under Section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c), for the violations alleged herein.

**V. ANSWER TO COMPLAINT AND
OPPORTUNITY TO REQUEST HEARING**

31. Respondent must file an Answer to this Complaint; failure to file an Answer may result in entry of a Default Judgment against Respondent.
32. Upon issuance of a Default Judgment, the civil penalty proposed herein shall become due and payable and the injunctive relief proposed herein shall become due within sixty (60) days.
33. Respondent's failure to fully pay the entire penalty, assessed by the Default Order, by the due date may result in a civil action to collect the assessed penalty, plus interest, attorneys' fees, and costs.
34. In addition, the Default Penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.
35. Any Answer must clearly and directly admit, deny, and/or explain each of the factual allegations contained in the Complaint with respect to which the Respondent has any knowledge, or clearly and directly state that the Respondent has no knowledge as to particular factual allegations in the Complaint.
36. The Answer shall also state the following:
 - a. the specific factual and legal circumstances or arguments which are alleged to constitute any grounds of defense;
 - b. the specific facts that Respondent disputes;
 - c. Respondent's basis for opposing the proposed penalty; and
 - d. whether Respondent requests a hearing.

Failure to admit, deny or explain any of the factual allegations in the Complaint constitutes admission of the undenied allegations.

37. Pursuant to Section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c), Respondent may request a hearing on the proposed civil penalty within thirty (30) days of receiving this Complaint.

38. At the hearing, Respondent may contest any material fact contained in the Findings listed in Sections II and III, above, and the appropriateness of the amount of the proposed civil penalty in Section IV, above.
39. The procedures for hearings are governed by the *Consolidated Rules*.
40. Any Answer to this Complaint, and any Request for Hearing, must be filed within thirty (30) days of receiving this Complaint with the following:

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

41. Copies of the Request for Hearing and the Answer, along with any and all other documents filed in this action, shall also be sent to the following:

Ms. Kelly Gable
Assistant Regional Counsel (3RC20)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

VI. SETTLEMENT CONFERENCE

42. EPA encourages settlement of proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the SDWA.
43. Whether or not a hearing is requested, Respondent may request a settlement conference with Complainant to discuss the allegations of the Complaint, the amount of the proposed civil penalty, and the proposed injunctive relief. **However, a request for a settlement conference does not relieve the Respondent of the responsibility to file a timely Answer to the Complaint.**
44. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Director of the Water Protection Division.
45. The execution of such a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint or to appeal the Final Order accompanying the Consent Agreement.

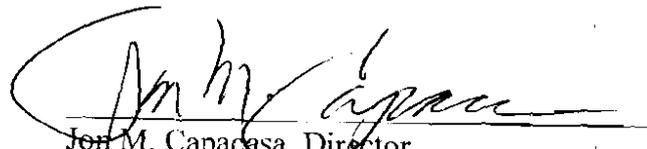
Docket No. SDWA-03-2011-0160-DU

46. If you wish to arrange a settlement conference, or if you have any questions related to this proceeding, please contact Kelly Gable, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region III, at (215) 814-2471 before the expiration of the thirty (30) day period following your receipt of this Complaint.
47. If you are represented by legal counsel, you must have your counsel contact Ms. Gable on your behalf.
48. Once again, however, such a request for a settlement conference does not relieve the Respondent of the responsibility to file an Answer within thirty (30) days following Respondent's receipt of this Complaint.

VII. PUBLIC PARTICIPATION

49. EPA is obligated, pursuant to Section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c), to give members of the public notice of and an opportunity to comment on this proposed order and penalty assessment.
50. If Respondent requests a hearing on this proposed penalty assessment, members of the public who submitted timely comments on this proposed penalty assessment will have a right under Section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c), to not only be notified of the hearing but also to be heard and to present evidence at the hearing on the appropriateness of this proposed penalty assessment.

Date: 6/6/2011


Jon M. Capacasa, Director
Water Protection Division

In the Matter of
EPA Docket No. SDWA-03-2011-0160-DU

CERTIFICATE OF SERVICE

I certify that I caused the enclosed Proposed Administrative Order and Complaint for Penalty, with Notice of Opportunity to Request Hearing, to be delivered to the following persons:

Delivery by Certified Mail Return Receipt Requested:

Mr. Donald D. Sbarra, President
Swamp Angel Energy, LLC
2414 N. Woodlawn, Suite 160
Wichita, KS 67220-3900

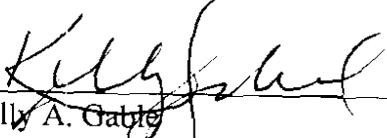
and

Delivery by hand (original and one copy):

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

Date:

June 6, 2011



Kelly A. Gable
Office of Regional Counsel
US EPA Region III

Enclosure

Cc: Matthew L. Wolford, Esq.
638 West 6th Street
Erie, PA 16507

PUBLIC NOTICE
Lafayette Township, McKean County, PA

Swamp Angel Energy, LLC
2414 N. Woodlawn, Suite 160
Wichita, KS 67220

Underground Injection Control Program
Notice of Proposal to Issue Administrative Order and Complaint for Penalty
Docket No. SDWA-03-2011-0160-DU
Opportunity for Public Comment

U.S. Environmental Protection Agency, Region 3
Water Protection Division
Office of Drinking Water & Source Water Protection
Ground Water & Enforcement Branch, (3WP22)
1650 Arch Street
Philadelphia, Pennsylvania 19103

Comments will be accepted until July 6, 2011

NOTICE: The U.S. Environmental Protection Agency (“EPA” or “Complainant”), Region 3 has issued a Proposed Administrative Order and Complaint for Penalty, with Notice of Opportunity for Hearing (“the Proposed Administrative Order”), to Swamp Angel Energy, LLC (“Respondent”) for violations of the Underground Injection Control (“UIC”) Program regulations and the Safe Drinking Water Act (“SDWA”). Specifically, Swamp Angel was in violation of 40 CFR § 144.11 for unauthorized injection into two injection wells on the Warrant 2277 Oil Production Lease located in the Lafayette Township, McKean County, Pennsylvania. The Proposed Administrative Order will require Swamp Angel to properly plug and abandon one of the wells it illegally used for injection, and to pay a penalty of one hundred fifty-seven thousand five hundred dollars (\$157,500).

NEED AND DESCRIPTION: In Pennsylvania, the UIC program is directly implemented by EPA. Therefore EPA is responsible for issuing enforcement actions to address violations of the UIC Program.

OPPORTUNITY FOR COMMENT: Section 1423(c)(3)(B) of the SDWA, 42 U.S.C. sub-section 300h-2(c)(3)(B), requires that interested persons be given notice of the Proposed Administrative Order and a reasonable opportunity to comment. Written comments will be accepted by the EPA at the address below. The deadline for submission of written public comments is July 6, 2011.

Comments should be sent to:

Regional Hearing Clerk (3RC00)
U.S. EPA Region 3
1650 Arch Street
Philadelphia, PA 19103

If Respondent requests a hearing within thirty (30) days of receiving the Proposed Administrative Order, those submitting written comments in response to this Notice will be advised of the time and place of the hearing and may appear to present evidence on the appropriateness of the provisions of the Proposed Administrative Order.

If Respondent does not request a hearing within thirty (30) days of receiving the Proposed Administrative Order, should EPA issue a Final Order, those members of the public who submitted timely comments on this Proposed Administrative Order will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a hearing thereon.

CONTACT INFORMATION: Interested persons may obtain further information, including copies of the Proposed Administrative Order by contacting:

Kelly Gable (3RC20)
U.S. EPA Region 3
1650 Arch Street
Philadelphia, PA 19103
gable.kelly@epa.gov
215-814-2471

or

Roger Reinhart (3WP22)
U.S. EPA Region 3
1650 Arch Street
Philadelphia, PA 19103
reinhart.roger@epa.gov
215-814-5462