

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

FILED

REGION 6

2018 JUN 13 AM 9:22

IN THE MATTER OF

Diamond 3S, LLC
Sand Springs, Oklahoma

Respondent

§ DOCKET NO. SDWA-06-2018-1102
§
§
§ PROCEEDING TO ASSESS A
§ CIVIL PENALTY UNDER SECTION 1423(c)
§ OF THE SAFE DRINKING WATER ACT
§
§ ADMINISTRATIVE COMPLAINT

REGIONAL HEARING CLERK
EPA REGION VI

I. STATUTORY AUTHORITY

This Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) pursuant to Section 1423(c) of the Safe Drinking Water Act (“the Act”), 42 U.S.C. § 300h-2(c). The Administrator of EPA delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6 (herein “RA”), who further delegated the authority to the Director of the Compliance Assurance and Enforcement Division of EPA Region 6 (“Complainant”). This Complaint is issued in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. §§ 22.1 through 22.52, including Rules related to administrative proceedings not governed by Section 554 of the Administrative Procedure Act, 40 C.F.R. §§ 22.50 through 22.52.

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.

Based on the following Findings of Fact and Conclusions of Law (“Findings”), Complainant finds that Diamond 3S, LLC (“Respondent”) violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is a company doing business in the State of Oklahoma, and as such, Respondent is a “person” as that term is defined at Section 1401(12) of the Act, 42 U.S.C. § 300f(12).

2. At all relevant times, Respondent owned or operated an “injection well” which is an “existing Class II well” as those terms are defined at 40 C.F.R. § 147.2902. The injection well is identified as the Kennedy 5 (“the well”). The well is also identified by EPA inventory number OS4348000, and is located in the Northeast Quarter of Section 1, Township 24 North, Range 7 East, Osage County, Oklahoma.

3. Because Respondent owned or operated an injection well, Respondent is subject to underground injection control (“UIC”) program requirements at 40 C.F.R. Part 147, Subpart GGG, which are authorized under Section 1421 of the Act, 42 U.S.C. § 300h.

Authorization Status

4. Regulations at 40 C.F.R. § 147.2903(a) require that any underground injection is prohibited 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. § 147.2909 provide that existing injection wells (wells authorized by the Bureau of Indian Affairs 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 provisions of 40 C.F.R. §§ 147.2903, 147.2905, 147.2907, and 147.2910 through 147.2915.

6. The well is authorized by rule in accordance with 40 C.F.R. § 147.2909.

7. Regulations at 40 C.F.R. § 147.2905 require an injection well to be plugged within one year after termination of injection. The RA may extend the time to plug if no fluid movement into an “Underground Source of Drinking Water” (“USDW”) will occur and the operator has presented a viable plan for using the well within a reasonable time. The term USDW is defined at 40 C.F.R. § 147.2902.

Regulations at 40 C.F.R. § 147.2905 also set out administrative and technical requirements to be followed when plugging an injection well.

8. Regulations at 40 C.F.R. § 147.2903(b) require that no owner or operator 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 a USDW, if the presence of that contaminant may cause the violation of any primary drinking water regulation or may otherwise adversely affect the health of persons.

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 a USDW through vertical channels adjacent to the well bore.

10. On February 29, 2016, Respondent tested the mechanical integrity of the casing, tubing, and packer of the well ("MIT") according to procedures set forth at 40 C.F.R. § 147.2912(a)(1)(i). The MIT indicated that the well did not have mechanical integrity of the casing, tubing, or packer.

11. On March 8, 2016, the EPA notified the Respondent that the well did not have mechanical integrity and required the Respondent to cease use of the well for fluid injection and to disconnect injection pipelines from the well.

12. On April 18, 2018, an EPA inspector inspected the well and observed the static fluid level in the well to be at the surface. The inspector also observed the surface pressure on the tubing to be 355 pounds per square inch ("psi"). This static fluid level is above the USDWs in the well. A static fluid level above the base of USDWs along with a surface pressure of 355 psi indicates that fluids could be moving through the well into USDWs. The inspector also observed that the injection pipeline was connected to well.

13. Therefore, Respondent violated regulations at 40 C.F.R. §§ 147.2903(b), 147.2905, and 147.2909 by maintaining an injection well in a manner that could allow fluids containing contaminants to move through the well bore into USDWs.

14. EPA has notified the public of the filing of this Complaint at www.epa.gov/publicnotices and has afforded the public thirty (30) days in which to comment on the Complaint and on the proposed penalty as required by Section 1423(c)(3)(B) of the Act, 42 U.S.C. § 300h-2(c)(3)(B). At the expiration of the notice period, EPA will consider any comments filed by the public.

III. PROPOSED PENALTY

15. 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 proposes to assess against Respondent a penalty of six thousand dollars (\$6,000.00).

16. The proposed penalty amount has been determined based on the statutory factors specified in Section 1423(c)(4)(B) of the Act, 42 U.S.C. § 300h-2(c)(4)(B), which include such factors as the seriousness of the violation; the economic benefit resulting from the violation; any history of such violations; any good-faith efforts to comply with the applicable requirements; the economic impact of the penalty on the violator; and such other matters as justice may require.

IV. COMPLIANCE ORDER

17. 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 the Respondent to take one of the following actions within ninety (90) days of the effective date of a Final Order:

- a. Plug the well according to regulations at 40 C.F.R. § 147.2905; or
- b. Repair the well so that it can demonstrate mechanical integrity of the casing, tubing, and packer in accordance to procedures set forth at 40 C.F.R. § 147.2912(a)(1)(i).

V. FAILURE TO FILE AN ANSWER

18. If Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, Respondent must file an Answer to this

Complaint within thirty (30) days after service of this Complaint whether or not Respondent requests a hearing as discussed below.

19. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15 (copy enclosed). Failure to file an Answer to this Complaint within thirty (30) days of service of the Complaint shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to a hearing. Failure to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion under 40 C.F.R. § 22.15(d).

20. If Respondent does not file an Answer to this Complaint within thirty (30) days after service of this Complaint, a Default Order may be issued against Respondent pursuant to 40 C.F.R. § 22.17. A Default Order, if issued, would constitute a finding of liability, and could make the full amount of the penalty proposed in this Complaint due and payable by Respondent without further proceedings thirty (30) days after a final Default Order is issued.

21. Respondent must send its Answer to this Complaint, including any request for hearing, and all other pleadings to:

Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

22. The Answer must be signed by Respondent, Respondent's counsel, or other representative on behalf of Respondent and must contain all information required by 40 C.F.R. §§ 22.5 and 22.15, including the name, address, and telephone number of Respondent and Respondent's counsel. All other pleadings must be similarly signed and filed.

23. Complainant has specified that the administrative procedures specified in 40 C.F.R. Part 22, Subpart I, shall apply to this matter, and the administrative proceedings shall not be governed by Section 554 of the Administrative Practice Act.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

24. Respondent may request a hearing to contest the issuance of this Complaint or to contest the appropriateness of the amount of the penalty, pursuant to Section 1423(c)(3)(A) of the Act, 42 U.S.C. § 300h-2(c)(3)(A). The procedures for hearings are set out at 40 C.F.R. Part 22 (copy enclosed), including 40 C.F.R. §§ 22.50 through 22.52.

25. Any request for hearing should be included in an Answer to this Complaint; however, as discussed above, Respondent must file an Answer meeting the requirements of 40 C.F.R. § 22.15 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 Complaint during the public comment period would have a right to be heard and to present evidence at a hearing under Section 1423(c)(3)(C) of the Act, 42 U.S.C. § 300h-2(c)(3)(C).

VII. SETTLEMENT

27. EPA encourages all parties against whom civil penalties are 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 or the amount of the proposed penalty. 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 Complaint, please contact Mr. Matthew Rudolph, of my staff, at 214-665-6434.

28. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order (“CAFO”) pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive the Respondent’s right to a hearing on any matter stipulated to therein or alleged in the Complaint. Any person who commented regarding this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such CAFO and to hold a hearing on the issues raised in the

Complaint. Such a petition would be granted and a hearing held only if the evidence presented by the petitioner's comment is material and was not considered by EPA in the issuance of the CAFO.

29. Neither assessment nor payment of a penalty in resolution of this action will affect Respondent's continuing obligation to comply with all requirements of the Act, the applicable regulations and permits, and any separate Compliance Order issued under Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), including one relating to the violations alleged herein.

6-12-18

Date



Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division

CERTIFICATE OF SERVICE

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

Original hand-delivered: Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Copy by certified mail: Mr. Joel Summers
Diamond 3S, LLC
20102 West Coyote Trail
Sand Springs, OK 74063

Copy: Ms. Jann Hayman, Director
Osage Nation Environmental and
Natural Resources Department
100 W. Main, Suite 304
Pawhuska, OK 74056

Ms. Robin Phillips, Superintendent
Bureau of Indian Affairs
Osage Agency
P.O. Box 1539
Pawhuska, OK 74056

Mr. Rusty Herbert (6RC-EW)
U.S. EPA, Region 6
10625 Fallstone Road
Houston, TX 77099

Dated: _____

13 JUN 2018

