

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Muskegon Development Co.
Mount Pleasant, Michigan

Respondent.

) Docket No. SDWA-05-2012- 0001
)
) Proceeding Seeking a
) Compliance Order and
) Assessment of a Civil
) Penalty Under Section
) 1423(c) of the Safe
) Drinking Water Act,
) 42 U.S.C. § 300h-2(c)

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PROTECTION AGENCY

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under section 1423(c) of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h-2(c), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is, by lawful delegation, the Director of the Water Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Muskegon Development Co., a Michigan corporation doing business in the State of Michigan.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 1421 of SDWA, 42 U.S.C. § 300h, requires U.S. EPA to promulgate regulations for State underground injection control (UIC) programs to prevent the endangerment of underground sources of drinking water, including inspection, monitoring, recordkeeping and reporting requirements.

10. Section 1422(b) of SDWA, 42 U.S.C. § 300h-1(b), provides that States, upon receipt of U.S. EPA's approval of a proposed UIC program, may implement a Federally-enforceable UIC program in that State and obtain primary enforcement responsibility of that program (a concept called "primacy").

11. Pursuant to sections 1421 and 1422 of SDWA, 42 U.S.C. §§ 300h and 300h-1, respectively, U.S. EPA promulgated UIC regulations at 40 C.F.R. parts 144-147.

12. Federal regulations, at 40 C.F.R. § 144.3, define "well" as "a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or, a dug hole whose depth is greater than the largest surface dimension; or, an improved sinkhole; or a subsurface fluid distribution system."

13. Federal regulations, at 40 C.F.R. § 144.6, define five classes of injection wells, including deep hazardous waste injection wells (Class I), wells for the reinsertion of brines associated with the production of petroleum and natural gas (Class II), wells for the extraction of minerals (Class III), shallow wells for the disposal of hazardous waste (Class IV), and any well not included in the above descriptions (Class V).

14. The UIC program for the State of Michigan is set forth at 40 C.F.R. Part 147, Subpart X.

15. Pursuant to 40 C.F.R. § 147.1151, at all times relevant to this Complaint, U.S. EPA had primacy over Class II wells, as defined by 40 C.F.R. § 146.5, in the State of Michigan.

16. Pursuant to 40 C.F.R. § 147.1151, the UIC program for the State of Michigan for Class II wells, as defined by 40 C.F.R. § 146.5, consists of the UIC program requirements set forth at, *inter alia*, 40 C.F.R. Parts 124, 144, 146, 147 (Subpart X) and 148, and was effective on June 25, 1984.

17. The UIC program set forth at 40 C.F.R. § 147.1151, constitutes the “applicable underground injection control program” as defined by Section 1422(d) of SDWA, 42 U.S.C. § 300h-1(d), for the State of Michigan.

18. Section 1423(a) of SDWA, 42 U.S.C. § 300h-2(a), provides, *inter alia*, that the Administrator may issue an order under Section 1423(c), of SDWA, 42 U.S.C. § 300h-2(c), to any person found to be in violation of any regulation or requirement of an applicable UIC program in a State that does not have primacy.

19. Section 1423(c)(2) of SDWA, 42 U.S.C. 300h-2(c)(2), provides that U.S. EPA may issue to any person in violation of any regulation or requirement relating to (A) the

underground injection of brine or other fluids brought to the surface in connection with oil natural gas production or (B) underground injection for the secondary or tertiary recovery of oil or natural gas, an administrative order assessing a civil penalty of not more than \$5,000 for each day of violation for any past or current violation, up to a maximum administrative penalty of \$125,000, or requiring compliance with such regulation or requirement, or both. Pursuant to the Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996 (“DCIA”), these statutory maximums were increased to \$5,500 for each day of violation for any past or current violation, up to a maximum administrative penalty of \$137,500, for violations that occurred from January 31, 1997 through March 15, 2004; increased to \$6,500 for each day of violation for any past or current violation, up to a maximum administrative penalty of \$157,500, for violations that occurred from March 16, 2004 through January 12, 2009; and increased to \$7,500 for each day of violation for any past or current violation, up to a maximum administrative penalty of \$177,500, for violations that occurred after January 12, 2009 (See 40 C.F.R. Part 19, as amended by 69 Fed. Reg. 7121 (Feb. 13, 2004)).

Factual Allegations and Alleged Violations

Complainant alleges that:

20. Respondent is a “person,” as that term is defined at section 1401(12) of SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.

21. At all times relevant to this CAFO, Respondent was an owner and operator of four wells with the following State of Michigan permit numbers and well names: #08642 Bateson #1, #09579 Prevost #1, #09660 Prevost #2 and #10121 Wilder Rae #1 (the four wells). All of the wells are in Bay County, Michigan.

22. Each of the four wells is a bored, drilled or driven shaft, or dug hole, whose depth is greater than the largest surface dimension.

23. Respondent previously operated the four wells as oil wells.

24. Respondent requested and received permission from the Michigan Department of Environmental Quality to convert the four wells to Underground Injection Control Class 2 wells. The four wells were converted from oil wells to injection wells between December 14, 2010 and February 7, 2011:

#08642 Bateson #1	Conversion completed on December 21, 2010;
#09579 Prevost #1	Conversion completed on December 14, 2010;
#09660 Prevost #2	Conversion completed on December 17, 2010;
#10121 Wilder Rae #1	Conversion completed on February 7, 2011.

25. Respondent was required to obtain Federal Underground Injection Control permits before converting the four wells cited above to injection wells, pursuant to 40 C.F.R. § 144.31.

26. On March 2, 2011, Respondent applied to Region 5 for the Federal permits. The conversions of the four wells cited above were already completed by that date.

27. The federal permits for the conversions of the four wells were issued on: June 29, 2011, for Bateson #1; August 1, 2011, for Prevost #1 and Prevost #2; and October 24, 2011, for Wilder Rae #1.

28. All of the federal permits were issued after the conversions were completed.

COUNT I**Conversion of Four Oil Production Wells to Class 2 Wells
Before Federal UIC Permits Were Issued**

29. Complainant incorporates paragraphs 1 through 28 of this CAFO as if set forth in this paragraph.

30. 40 C.F.R. § 144.31 prohibits construction of an injection well “until the owner or operator is authorized by permit.”

31. Respondent lacked the necessary Federal permits when it converted the four wells, cited above, to UIC Class 2 wells. Each of Respondent’s well conversions without Federal UIC permits constitutes a violation of 40 C.F.R. § 144.31.

32. Each of Respondent’s violations of 40 C.F.R. § 144.31 subjects Respondent to the issuance of an administrative order pursuant to Section 1423(c)(2) of SDWA, 42 U.S.C. § 300h-2(c)(2).

33. Respondent’s violation of 40 C.F.R. § 144.31 authorizes the Administrator to impose a civil penalty under Section 1423(c) of SDWA, 42 U.S.C. § 300h-2(c), to seek an order requiring compliance with that provision, or both.

Civil Penalty

34. Section 1423(c)(4)(B) of SDWA, 42 U.S.C. § 300h-2(c)(4)(B), provides that, in assessing a civil penalty under section 1423(c), U.S. EPA must take into account (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.

35. Based upon the factors set forth at section 1423(c)(4)(B) of SDWA, 42 U.S.C. § 300h-2(c)(4)(B), and applicable penalty policies, including *Region 5 Underground Injection Control Proposed Administrative Order Penalty Policy* (September 21, 1994), Complainant has determined that an appropriate civil penalty to settle this action is \$16,000.

36. Within 30 days after the effective date of this CAFO, Respondent must pay a \$16,000 civil penalty for the SDWA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
 Fines and Penalties
 Cincinnati Finance Center
 P.O. Box 979077
 St. Louis, Missouri 63197-9000

The check must note the following: Muskegon Development Company, the docket number of this CAFO, and the billing document number _____.

37. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
 U.S. EPA, Region 5
 77 West Jackson Boulevard
 Chicago, Illinois 60604

Ray Urchel (WU-16J)
 Underground Injection Control Branch
 U.S. EPA, Region 5
 77 West Jackson Boulevard
 Chicago, Illinois 60604

Susan Prout (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

38. This civil penalty is not deductible for federal tax purposes.

39. If Respondent does not pay timely the civil penalty EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

40. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

41. This CAFO resolves only Respondent's alleged liability for federal civil penalties for the violations and facts alleged in the CAFO.

42. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

43. Respondent certifies that it is complying with 40 C.F.R. § 144.31.

44. This CAFO does not affect Respondent's responsibility to comply with SDWA and other applicable federal, state, and local laws.

45. Complainant is providing public notice of and a reasonable opportunity to

comment on the proposed assessment of an administrative penalty against Respondent.

46. The terms of this CAFO bind the Complainant, the Respondent and Respondent's successors, and assigns.

47. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

48. Each party agrees to bear its own costs and attorney's fees in this action.

49. This CAFO constitutes the entire agreement between the parties.

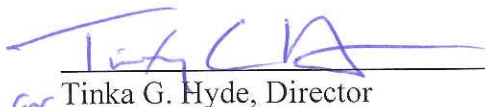
Muskegon Development Co., Respondent

8-15-12
Date


[Person's name and title] **JOEL R. MYLER**
Muskegon Development Co.
Vice President - Land & Legal

United States Environmental Protection Agency, Complainant

8/20/12
Date


for Tinka G. Hyde, Director
Waters Division

**In the Matter of:
Muskegon Development Co
Docket No. SDWA-05-2012-0001**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. § § 22.18 and 22.31. IT IS SO ORDERED.

Date

Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5